

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Ameren Services Company, FirstEnergy Corp.,
Northern Indiana Public Service Company,
National Grid USA, and Midwest
Independent Transmission System Operator, Inc.

Docket Nos. ER02-2233-001
and EC03-14-000

ORDER CONDITIONALLY ACCEPTING AGREEMENTS
FOR FILING, SUSPENDING AGREEMENTS, SUBJECT TO
REFUND, AND ORDERING COMPLIANCE FILING

(Issued December 19, 2002)

1. This order conditionally accepts for filing, and suspends and makes effective subject to refund, future filings, and further orders, an executed: (1) Appendix I Independent Transmission Company (ITC) Agreement (ITC Agreement) between GridAmerica Participants¹ and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (collectively, Applicants); (2) Master Agreement by and among GridAmerica Holdings LLC,² the GridAmerica Companies, and National Grid USA (Master Agreement); (3) Limited Liability Company Agreement of GridAmerica LLC (LLC Agreement); and (4) Operation Agreement by and among the GridAmerica

¹The GridAmerica Participants are the GridAmerica Companies and National Grid USA (National Grid). The GridAmerica Companies (aka GridAmerica Three) are: Ameren Services Company as agent for its electric utility affiliates, Union Electric Company, d/b/a AmerenUE, and Central Illinois Public Services Company, d/b/a AmerenCIPS (collectively, Ameren); American Transmission Systems, Incorporated (ATSI), a subsidiary of FirstEnergy Corp. (FirstEnergy); and Northern Indiana Public Service Company (NIPSCO).

²GridAmerica Holdings LLC is a wholly-owned subsidiary of National Grid which will serve as the Initial Member of GridAmerica.

Companies and GridAmerica (Operation Agreement) (collectively, Four Agreements).³ This order benefits customers as it furthers the Commission's goal of successful Regional Transmission Organization (RTO) development and operation.

2. As a result of our actions herein, we find that National Grid is independent and can serve as the managing member of GridAmerica; we approve on an interim basis, the proposals of GridAmerica to provide consulting services, certain RTO functions under contract to Midwest ISO and certain delegated RTO functions; we require an itemization of the amounts included in the bundled negotiated payment to be made by Midwest ISO to GridAmerica for these services; and, we make other significant rulings on the contested payments and terms proposed by this filing.

3. In this order, we approve the delegation of certain functions to GridAmerica consistent with our ruling in TRANSLink. As we stated in that order, we believe that it is acceptable for some functions with predominantly local characteristics to be delegated to an ITC so long as the RTO has oversight in the event that local actions have a regional impact. We note that the ITC Agreement between GridAmerica Participants and Midwest ISO provides for the reassessment of delegated functions and associated costs once SMD is implemented or in response to Commission changes in its policy regarding TRANSLink. We believe that this is a reasonable approach to ITC and RTO development and will provide the Midwest ISO Board and market participants with the opportunity to evaluate the most cost-effective approach to implementing the functions and characteristics required of an RTO.

I. Introduction

4. Today the Commission is acting on four interrelated orders which increase the size and scope of Midwest ISO and further the development of viable for-profit transmission companies that operate and perform certain functions under Midwest ISO. Today's orders, when fully implemented, will increase Midwest ISO's footprint and allow customers one-stop shopping for service under a single tariff covering Midwest ISO, Southwest Power Pool (SPP), TRANSLink and the GridAmerica Participants.⁴

³Midwest ISO joins in this filing to the extent it submits the ITC Agreement for filing. See Transmittal Letter at 2.

⁴See Midwest ISO system map on Appendix B.

5. Our approval of the instant application authorizes an increase in the size of Midwest ISO by 4 million customers and adds 14,000 miles of transmission lines across five states.

II. Background

6. On July 31, 2002, the Commission concurrently issued two orders on related dockets. In Alliance Companies, et al., 100 FERC ¶ 61,137 (2002) (Docket No. EL02-65-000, et al.) (July Compliance Filing Order) the Commission conditionally accepted for filing several compliance filings in which each of the Alliance Companies elected to join either Midwest ISO or PJM Interconnection, L.L.C. (PJM). Ameren, ATSI, and NIPSCO elected to join Midwest ISO.

7. In Ameren Services Company, et al., 100 FERC ¶ 61,135 (2002) (July 31 Order) (Docket No. ER02-2233-000), the Commission conditionally accepted and suspended an executed Participation Agreement and an unexecuted ITC Agreement filed by the newly formed GridAmerica Companies, along with National Grid and Midwest ISO, effective September 2, 2002.⁵ The Commission noted that many aspects of the initial GridAmerica filing, such as the delegation of functions and cost-related and rate concerns, would be more closely examined upon the filing of an executed ITC Agreement. GridAmerica was directed to provide a detailed explanation of the transfer of functional control of the relevant transmission facilities.

8. The two interrelated orders were designed to move the process forward in establishing a joint and common market in Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000.⁶

⁵The Participation Agreement and unexecuted ITC Agreement were prepared and submitted pursuant to a letter of intent and term sheet that were submitted in Docket Nos. EL02-65-007 and RT01-88-021 (June 20 Filing). Applicants assert that the Participation Agreement is now superfluous and has been terminated by the parties. See Transmittal Letter at 2 fn2.

⁶Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), (continued...)

III. Compliance Filing

9. On November 1, 2002, GridAmerica Participants and Midwest ISO filed the Four Agreements in compliance with the July 31 Order. The Four Agreements and related documents are intended to facilitate the formation and operation of GridAmerica LLC (GridAmerica)⁷ as an ITC within Midwest ISO.

ITC Agreement

10. The proposed executed ITC Agreement sets forth the terms under which Midwest ISO and GridAmerica will conduct business, integrate three major transmission systems into Midwest ISO, and recover RTO development costs without increasing Midwest ISO's Schedule 10 adder.⁸

11. The executed Midwest ISO ITC Agreement is substantially identical to the unexecuted version filed on July 3, 2002, and subsequently accepted in the July 31 Order. On October 31, 2002, the Midwest ISO Board of Directors unanimously authorized Midwest ISO to execute the Midwest ISO ITC Agreement. The Board also directed the Midwest ISO management to continue to keep in mind the interests of Midwest ISO's members and stakeholders as it implements the agreement with GridAmerica.

12. Although the Midwest ISO ITC Agreement is substantially identical to the previously filed unexecuted copy, the GridAmerica Participants state that changes made to the unexecuted version will lower total costs for the stated and capped fees. Article 4.1.3(d) of the Midwest ISO ITC Agreement states that Midwest ISO shall make a one-time payment to reimburse GridAmerica Companies for their start-up costs and Alliance RTO development costs, in an amount not to exceed \$36.2 million. In addition, Section 4.1.4 requires GridAmerica to consult with Midwest ISO for any expenditure over \$500,000 for which it will seek recovery.

13. As provided in Article 6 of the Midwest ISO ITC Agreement, rather than using a scheduling system hosted by a third-party vendor, Midwest ISO and GridAmerica agreed

⁶(...continued)
aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC,
___ F.3d ___ (D.C. Cir. 2001).

⁷GridAmerica's formation is the subject of Docket No. EC03-14-000.

⁸See Transmittal Letter at 4.

to use Midwest ISO's existing automated scheduling system. GridAmerica asserts that using the existing system is the most cost effective and efficient way to achieve Day 1 operation. As a result, GridAmerica's annual compensation for management services was reduced by \$2.25 million.

14. In accordance with Article 8, GridAmerica will provide consulting services for Midwest ISO in the area of transmission best practices. The GridAmerica Participants state that National Grid's cutting-edge experience should help fulfill Midwest ISO's commitment of developing and deploying new technology as a result of participation with GridAmerica.

15. The Midwest ISO ITC Agreement also includes preconditions to the occurrence of the Control Date on which Midwest ISO commences transmission service on GridAmerica's transmission facilities. The preconditions relate to obtaining regulatory approvals and the need to finish developing, and fully testing, integrated operations. In addition, Section 19 of the agreement now contains reciprocal representations and warranties concerning proper establishment, authority, lack of legal barriers to operation and other appropriate matters.

16. The Midwest ISO ITC Agreement also adds or changes Schedules 1, 3, 4, and 5 of the Midwest ISO ITC Agreement. Schedule 1 lists the facilities over which GridAmerica will exercise functional control, whereas Schedules 3 and 4 itemize the GridAmerica Companies' current Open Access Transmission Tariff and grandfathered agreements for which Midwest ISO will assume responsibility. Schedule 5, Delineation of Functions between Midwest ISO and GridAmerica, was revised to clarify various provisions.

LLC Agreement

17. The LLC Agreement sets forth the rights and obligations of the Managing Member of GridAmerica, the terms and conditions on which membership units in the Company are to be obtained, and the governance and financing of GridAmerica.⁹ The LLC Agreement permits GridAmerica to: (1) own transmission facilities, (2) serve as an ITC, and (3) provide transmission and transmission-related services in accordance with the Commission's Rules and Regulations and the ITC Agreement. Under the LLC Agreement, GridAmerica may also operate its transmission facilities and exercise functional control over the GridAmerica Companies' transmission facilities in accordance with the Operation Agreement (described below).

⁹Id.

Master Agreement

18. The Master Agreement sets forth, among other things, the steps that must be completed prior to commencement of service by the ITC (Transmission Service Date) and the parties' rights and obligations with respect to the divestiture of transmission facilities to the ITC.¹⁰

19. The Transmission Service Date will not occur unless or until: (1) each party has obtained all regulatory approvals and the Commission has issued a final order, (2) the GridAmerica Companies and Midwest ISO certify that all requirements have been met for the Midwest ISO ITC Agreement to go into effect, (3) Midwest ISO reimburses the GridAmerica Companies for costs incurred in developing the Alliance RTO and reimburses GridAmerica and the GridAmerica Companies for costs related to achieving the Transmission Service Date, and (4) Midwest ISO refunds to Ameren the payment due under the Illinois Power settlement. If the Transmission Service Date does not occur by June 30, 2003, any party can withdraw from the GridAmerica ITC on a 30-day written notice to other parties.

20. The Master Agreement details the rights and obligations of the parties divesting transmission facilities to GridAmerica. The transmission owners will have a "put right" to contribute transmission facilities to GridAmerica in exchange for units in GridAmerica at fair market value. The put assets must include all of the facilities, real estate interests and easements, contract rights, intellectual property rights and other assets reasonably necessary to operate the contributed transmission facilities as part of an integrated system with other GridAmerica transmission facilities.

Operation Agreement

21. The Operation Agreement sets forth the terms and conditions on which GridAmerica will manage the GridAmerica transmission facilities and the respective rights and obligations of GridAmerica and the Transmission Owners with respect to operating matters.¹¹

22. On the Transmission Service Date, the Transmission Owners will transfer functional control of their transmission facilities to GridAmerica, and GridAmerica will transfer to Midwest ISO those functions delineated as Midwest ISO functions under the

¹⁰See Transmittal Letter at 11.

¹¹See Transmittal Letter at 14.

Midwest ISO ITC Agreement. All "functional control" will be exercised by Midwest ISO or GridAmerica and none of the aspects of functional control will remain with the transmission owners.

23. GridAmerica is required to perform all of its obligations in a non-discriminatory manner, to make decisions within its scope of authority without discriminating among the transmission owners and without discriminating against any transmission owner in favor of GridAmerica Companies.

Applicants' Proposal

24. Applicants request acceptance of these agreements to permit GridAmerica to join Midwest ISO as a for-profit ITC. GridAmerica Participants propose to complete the systems originally being developed for Alliance and, in exchange for Midwest ISO's unrestricted access to these assets, Midwest ISO will pay the Alliance Participants Administrative and Start-up Activities Company LLC the amount contributed by the GridAmerica Participants for their development and will reimburse each company for costs it incurred in the development of the Alliance RTO up to \$36.2 million, total for all companies. Midwest ISO will also refund the \$18 million payment, plus interest, Ameren made to leave Midwest ISO, and will reimburse GridAmerica for its costs incurred in integrating GridAmerica's systems into Midwest ISO's systems.

25. Once GridAmerica is in operation, transmission service will be performed within the footprint of GridAmerica at the existing rates of each of the GridAmerica Three participants under Midwest ISO's OATT. The companies' existing OATT transmission rates will be used within the companies' rate zones. For service through and out of Midwest ISO's system, the ITC Agreement calls for Midwest ISO to discount its current rate so as to maximize revenues while minimizing the charges applicable to this service.¹² Midwest ISO also agrees to support the recovery of revenues lost by the GridAmerica Participants as a result of the elimination of rate pancaking. The proposed ITC Agreement includes a Delineation of Functions, that describes how GridAmerica and Midwest ISO will allocate responsibilities. Midwest ISO will compensate GridAmerica \$12 million annually for its consulting service and performance of contracted and delegated services. This amount represents a reduction from the \$14.25 million

¹²Applicants state that GridAmerica will submit, for Commission approval, a schedule of rates to be included in the Midwest ISO Open Access Transmission Tariff (OATT) no later than 60 days before transmission is scheduled to begin, or approximately February 1, 2003. See Transmittal Letter at 4.

established in GridAmerica's original proposal, due to the parties' agreement to use Midwest ISO's existing scheduling systems instead of a scheduling system hosted by a third-party vendor.

26. Applicants intend for GridAmerica to commence operation during April 2003, so that it will be fully operational during the Summer 2003 peak season. According to Applicants, this schedule requires that they obtain substantial irrevocable financial commitments by the beginning of 2003. Consequently, they request Commission approval of the proposed filing, as well as the authorizations necessary to form and operate GridAmerica, without condition or modification, subject to GridAmerica filing specific rates at a later date.

27. In order to facilitate an April 2003 start-up date, Applicants request Commission action on the instant filing by December 31, 2002.

IV. Notice of Filing, Comments, and Protests

28. Notice of Applicants' filing was published in the Federal Register, 67 Fed. Reg. 68,854 (2002), with protests and interventions due on or before November 20, 2002. Amended notices were issued adding Docket No. EC03-14-000 to the proceeding and extending the comment deadline until November 22, 2002.

29. Entities listed in Appendix A to this order filed notices of intervention, motions to intervene, and protests in response to the notices.

30. Applicants and Consumers filed answers to the intervenors' comments. We will discuss these pleadings in more detail below.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure¹³, the notices of intervention and the timely, unopposed motions to intervene serve to make the entities listed in Appendix A parties to this proceeding. Given the early stage of this proceeding and the absence of undue delay or prejudice, we find good cause to accept IUB's late notice of intervention.

¹³See 18 C.F.R. § 385.214 (2002).

32. Further, while Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁴ prohibits answers to protests unless otherwise permitted by the decisional authority, we find good cause exists to allow Applicants' and Consumers' answers, as they provide additional information that assists us in the decision-making process.

B. Standard of Review

33. Our review of the Four Agreements will be pursuant to our authority under Sections 203 and 205 of the FPA¹⁵ and will be examined pursuant to Order No. 2000, Alliance Companies, 99 FERC ¶ 61,105 (2002) (April Order), TRANSLink Transmission Company, L.L.C., et al., 99 FERC ¶ 61,106 (2002) (TRANSLink), and Midwest ISO Agreement, Appendix I.¹⁶

34. The Commission has recognized that the ITC business model can bring significant benefits to the industry and further the goals of Order No. 2000.¹⁷ In order for GridAmerica to move forward with its attempt to meet the Commission's goals, we will conditionally accept Applicants' proposal, subject to the discussion that follows. We believe that the proposal will allow greater flexibility in the formation of RTOs while still satisfying Order No. 2000's goal of increased regionalization of the grid.

C. Independence and Governance

35. In the July 31 Order, the Commission directed Applicants to "address, in detail, National Grid's independence (including but not limited to National Grid's ongoing

¹⁴See 18 C.F.R. § 385.213(a)(2) (2002).

¹⁵16 U.S.C. § 824b and 16 USC § 824d (2001), respectively.

¹⁶In the April Order, the Commission approved a hybrid RTO model, giving ITCs the opportunity to profitably own and manage their independent transmission businesses. The Commission directed the Alliance Companies to make a compliance filing that describes the RTO that they plan to join and states whether such participation will be collective or individual. The Commission noted that if the Alliance Companies decide to join Midwest ISO, they must include in the compliance filing details of their plans for the timing of such a filing under the Midwest ISO Agreement, Appendix I, in light of the guidance provided in the April Order and the contemporaneously-issued TRANSLink.

¹⁷See TRANSLink at 61,455; and Order No. 2000 at 31,036-37.

business relationships with AEP and ComEd) when they submit the revised definitive agreements that will, among other things, set forth the establishment and governance of GridAmerica.” July 31 Order at 61,514 P 22. Applicants have submitted a description of National Grid’s independence in an effort to address the parties’ concerns expressed in the July 31 Order.¹⁸

36. The LLC Agreement sets forth the rights and obligations of the Managing Member of GridAmerica, the terms and conditions on which membership units are attained, and the governance and financing of GridAmerica. The LLC Agreement permits GridAmerica to own transmission facilities and serve as an ITC and to provide transmission and transmission related services in accordance with the rules and regulations of the Commission and the ITC Agreement. Under the LLC Agreement, GridAmerica may also operate its transmission facilities and exercise functional control over the GridAmerica Companies' transmission facilities in accordance with the Operation Agreement.

Managing Member

37. A wholly-owned direct subsidiary of National Grid will become the initial member and will serve as the Managing Member of GridAmerica with broad authority to direct the day-to-day operations of GridAmerica. The Managing Member will also have a fiduciary duty of loyalty and care to members and GridAmerica, but will not be permitted to discriminate in favor of transmission facilities owned by GridAmerica. The Managing Member will be the only member of GridAmerica until other capital or transmission assets are contributed. The Managing Member and non-market participants that become

¹⁸In the July 31 Order, the Commission summarized the parties’ concerns with regard to National Grid’s independence. The Commission said:

[T]he protestors' objections encompass several main themes. First is GridAmerica's failure to demonstrate that it meets the independence requirements of Order No. 2000. They assert that National Grid is not sufficiently independent because: (1) it will have on-going business relationships with AEP and ComEd; (2) GridAmerica Three will have the unfettered right to remove National Grid as managing member; and (3) National Grid will have a significant corporate fiduciary responsibility to favor GridAmerica Three market participants over others.

July 31 Order at 61,513 P 21.

members of GridAmerica will hold Class A Units and will be entitled to vote on all matters presented to the members for action or consideration.

38. Market participants that become members of GridAmerica will hold Class B Units. Any GridAmerica Company that divests transmission facilities but remains a market participant will receive Class B Units. Members holding Class B Units are entitled to vote only on a few limited matters that affect the fundamental nature of GridAmerica such as mergers, business combinations, dissolution or liquidation, and approval of any action by the Managing Member that is not otherwise permitted under the agreements. The voting rights are similar to the traditional rights of limited partners to protect the value of the investment in a partnership, but do not include a voice in the day-to-day operations of GridAmerica. Class B unit holders also have the right to vote to remove the Managing Member for "Cause".¹⁹

39. The Managing Member of GridAmerica may be removed at any time if the Commission determines in a final order that the Managing Member is a market participant.²⁰ In addition, the Managing Member can also be removed for "Cause." Removal of the Managing Member for Cause must be approved by a super-majority of transmission owners.²¹ Both of these reasons are justified to ensure that the management of GridAmerica continues to be disinterested in the market effects of its decisions and operates the ITC with the appropriate level of care.

40. Applicants state that, in response to previous comments that the GridAmerica Companies would have the "unfettered" right to remove National Grid, the LLC and Operations Agreements permit GridAmerica's transmission owners to remove National Grid only under limited circumstances. With regard to commentor concerns that National Grid would have fiduciary duties to favor the GridAmerica Companies that are market participants, Applicants state that the LLC Agreement explicitly prohibits the Managing

¹⁹Cause is defined in the LLC Agreement as gross negligence or willful misconduct, or failure to perform certain obligations set forth in Article III or Section 10.1 of the Master Agreement.

²⁰See Section 6.1(b) of the LLC Agreement.

²¹Which before any transmission facilities have been divested to GridAmerica, is two-thirds of the transmission owners and after transmission facilities have been contributed to GridAmerica is two-thirds of the combined net transmission plant value subject to GridAmerica's control within the ITC.

Member from considering the GridAmerica Companies' interest in any business other than transmission.

41. In response to concerns about National Grid's independence if it manages the transmission assets of American Electric Power and Commonwealth Edison because they own significant merchant functions, Applicants state that National Grid currently has no business relationship with either company. While National Grid may have such a relation in the future if an ITC is formed within PJM, Applicants contend that such concerns are still misplaced because (1) the Commission has determined that an ITC that contains vertically integrated utilities can perform certain RTO functions as discussed in TRANSLink; the April Order, and Alliance Cos. 100 FERC ¶ 61,137; and (2) the LLC Agreement states that the Managing Member, in fulfilling its fiduciary duties, is prohibited from taking into account the merchant interests of GridAmerica's members.

42. Applicants state that, according to earlier comments, three issues identified in National Grid USA, 97 FERC ¶ 61,329 at 62,564-66 (2001), on reh'g 99 FERC ¶ 61,102 (2002), remain outstanding: (1) an acceptable split of RTO functions; (2) the alleged ability of National Grid to favor certain assets over others; and (3) National Grid's satisfaction of the commitments made in Docket No EL01-80-000. Applicants state that these issues were resolved in light of the Commission's subsequent decisions in TRANSLink and two Alliance Cos. orders. According to Applicants, the functions to be performed by National Grid conform with these orders. They also explain that National Grid provided a detailed description of its provider of last resort (PLR) obligations and power sources used to meet those obligations in Docket No. EL01-80-000 and that, upon review, the Commission concluded that National Grid had demonstrated that it is not a market participant with respect to its last resort sales and other obligations in New York and New England.²² Further, Applicants state that National Grid had previously submitted reports in Docket No. EL01-80-000 detailing how it has satisfied its commitments.

²²Citing National Grid USA, 97 FERC at 62,563.

Discussion of Independence and Governance Issues

1. Demonstration of Independence

Intervenors' Comments

43. PSEG Companies object to GridAmerica's choice of National Grid as Managing Member. It contends that, contrary to GridAmerica's assertion, the Commission has not previously determined that National Grid is not a market participant but, rather, the Commission's finding was limited to National Grid's provider of last resort (PLR) sales and other New York and New England obligations.²³ It argues that the delegation of certain functions to National Grid, such as approving transmission transactions, calculating Available Transfer Capability (ATC) and Total Transfer Capability (TTC) and managing ratings and maintenance schedule, would allow it to control the flow to neighboring regions to benefit National Grid's obligations in the Northeast. Further, it asks the Commission to reject National Grid's proposed compensation arrangements because (1) it rewards National Grid for maximizing profits through the use of its Transmission Facilities without regard to the rest of the market and (2) details of the incentive arrangement have not been disclosed.

44. Coalition Customers note that the Commission found that National Grid's PLR arrangements did not trigger market participant status because "all revenues and costs will be fully reconciled, so that there will be no opportunity for either profits or losses."²⁴ Coalition Customers ask the Commission to state that National Grid will become a market participant if the underlying condition to the Commission's finding, i.e., that all revenues and costs are fully reconciled, no longer exists.

45. DTE Energy Corporation (DTE) contends that National Grid has not adequately explained its relationship with AEP and ComEd, as required by the July 31 Order. It also questions whether National Grid will remain independent given its plans to integrate the operations of GridAmerica and the PJM transco (GridCo).

²³Citing National Grid USA, 97 FERC ¶ 61,329 at 62,563 (2001), order on reh'g 99 FERC ¶ 61,102 (2002).

²⁴Id.

Response

46. In response, Applicants state that PSEG Companies misread the LLC Agreement. Applicants claim that under Section 6.5(iv) of the LLC Agreement, the Managing Member only has a duty of loyalty to the members' interests in the LLC and, therefore, the Managing Member owes no duty with respect to any other interest the members may have. Applicants further claim that this duty is completely reconcilable with its obligation to perform market functions in a non-discriminatory manner and is consistent with Commission precedent. Arizona Publ. Serv. Co., 101 FERC ¶ 61,033 (2002); Alliance Companies, 91 FERC ¶ 61,152 (2000).

47. In their response, Applicants state that National Grid's presentation in Docket No. EL01-80-000 concerning its various residual obligations and resources was extensive. Applicants contend that neither National Grid's demonstration of its non-market participant status nor the Commission's findings in National Grid USA, 97 FERC ¶ 61,329, were limited to the reconciliation of the costs and revenues for last resort service. Moreover, even if the reconciliation mechanisms that are now in place with respect to last resort service cease to operate, there may be other means that could be put in place to ensure that National Grid has no economic interest in providing last resort service.

48. Applicants respond to DTE Companies' concerns by stating that no ITC arrangement has been agreed upon by PJM, National Grid and the prospective ITC participants, and it is uncertain when or if one will be.

49. Applicants further contend that the transmission owners in GridAmerica and the users of GridAmerica's system have interests in ensuring that the Managing Member of GridAmerica is not a market participant and will have the ability to see that questions concerning National Grid's status are brought to the Commission's attention.

Commission Determination

50. We disagree with the assertions that National Grid has failed to demonstrate that it meets the Commission's independence requirements such that it cannot serve as Managing Member of GridAmerica. National Grid will not own any generation and National Grid has satisfied its commitments in Docket No. EL01-80-000. In addition, the functions that will be performed by National Grid, subject to the conditions required by this order, are generally consistent with those functions delegated to an ITC in TRANSLink. We have further found in our July 31 Order in Alliance, that it will be beneficial that National Grid serve as the managing member of a PJM ITC to assist in managing the seams in the transition to a common market between Midwest ISO and

PJM. Any contentions that this will jeopardize National Grid's independence as established herein can be raised in any future PJM filing where National Grid is proposed to be the Managing Member. Therefore, we find that National Grid can serve as Managing Member of GridAmerica under Midwest ISO.

2. Non-Market Participation Certification & Removal of Managing Member

Intervenors' Comments

51. The Coalition of Midwest Transmission Customers and the Industrial Energy Users-Ohio (Coalition Customers) protest several specific provisions of the LLC Agreement. Under Section 1.1, an entity seeking to possess Class A Units, which are available only to Non-Market Participants, must have a company senior executive submit a "Non-Market Participation Certificate" verifying that a Class A Unit holder is not a market participant. Coalition Customers object to language of the LLC Agreement providing that the Managing Member can rely on such certificates without investigation. It contends that, to assure that holders of Class A Units are divorced from market participation, designations of non-market participant status should be subject to Commission approval. Coalition Customers also request that, to assure transparency of the ITC governance, Midwest ISO maintain on its website an up-to-date list of all Class A Unit holders.

52. Coalition Customers also seek a revision to Section 6.1 of the LLC Agreement, which sets forth the conditions for removal or resignation of the Managing Member, to require that (1) the Commission approve any termination of the Managing Member's term; and (2) if no suitable replacement has obtained Commission approval, the ITC will lose its independence status.

Response

53. With respect to Sections 6.1 and 3.2, Applicants maintain that neither section should be modified to specify that Commission review and approval is necessary. Applicants contend that the LLC Agreement does not and cannot subtract from the Commission's jurisdiction and authority under the Federal Power Act (FPA). Therefore, Applicants state that if Commission review and approval is needed, that will be done or if review and approval is not needed and a party is dissatisfied, it will be able to file a complaint with the Commission.

Commission Determination

54. We agree with Coalition Customers' concern that non-market participant (holders of Class A Units) designation status and a demonstration that they are independent must be subject to Commission approval. We also agree with Coalition Customers that Midwest ISO must maintain a listing of all Class A Unit holders on its website. Among other things, this will assist the Midwest ISO Independent Market Monitor in assessing who the market participants are in Midwest ISO.

55. Finally, we will require that any proposal to remove or terminate the Managing Member must be approved by this Commission. We therefore direct Applicants to modify the relevant agreements accordingly.

3. Withdrawal Provisions

GridAmerica's Proposal

56. The agreements provide for the following withdrawal rights of the parties to the agreements:

Section 5.1 of the Operation Agreement provides that each GridAmerica Company can unilaterally withdraw on six months' notice, and without cause, either at the end of Year 5 or after any of the three GridAmerica Companies divests ownership of any portion of its transmission facilities.

Section 5.7 of the Master Agreement contains provisions ensuring that approximately two and one-half years following the effective date, National Grid as Managing Member, and the GridAmerica Companies, as participants, may withdraw. They may exercise this option if, 29 months after the effective date, no GridAmerica participant has issued a "put" notice or if a "put" right is exercised within the first 30 months.

Whenever a GridAmerica Company merges with or sells a substantial portion of its transmission facilities to a third party, the new owner can withdraw its facilities from GridAmerica and Midwest ISO on thirty days notice, and without Commission approval.

The initial term of GridAmerica's participation in Midwest ISO is approximately 2½ years, less than the five-year initial term of the Midwest ISO. Thereafter, the

agreement is only year-to-year. GridAmerica may also withdraw from Midwest ISO on six months' notice, at the end of the initial term or each annual term.

Intervenors' Comments

57. Wisconsin Public Power Inc. (WPPI) and Missouri Joint Municipal Electric Utility Commission (MJMEUC) protest that the broad withdrawal rights afforded to GridAmerica and its participants will compromise the independence and efficiency of GridAmerica and Midwest ISO. MJMEUC contends that the withdrawal provisions create a continuing source of leverage by Non-Divesting Transmission Owners over GridAmerica and Midwest ISO. It argues that the withdrawal provisions allow termination on short notice and without financial penalty or adequate customer protections. It recommends that the Commission require that the GridAmerica documents track the Midwest ISO Transmission Owner Agreement provisions under which facilities must remain in Midwest ISO for at least five years, require 1-2 years notice of withdrawal after the initial commitment, and require that withdrawing parties remain obligated for costs incurred in reliance on their continued participation.

Commission Determination

58. We agree with MJMEUC's concerns. We believe that the withdrawal provisions may adversely hamper Midwest ISO's operations. For example, the proposed exit provisions may unfairly hinder Midwest ISO's ability to recoup administrative, transaction and transition costs as well as other expenditures being incurred. Moreover, we are concerned that the proposed provisions could negatively affect Midwest ISO's efficiency when Midwest ISO's scope is perpetually subject to reduction on short notice. Transmission and generation construction planning and long-term power-supply transaction decisions could be unsettled.

59. In order to promote consistency and to have all transmission owners on the same footing, we will direct Applicants to replace the current withdrawal language with the termination provisions in the Midwest ISO Transmission Owners Agreement which provides for an initial term of five years from the date the transmission owner signs on and thereafter requires notice of 12-24 months, depending on when during the calendar year the notice is given. The notice period for disposition out (i.e., a disposition situation

where substantially all of the owner's facilities are transferred to a new owner, which proceeds to withdraw them from the Midwest ISO) would remain at one year.²⁵

D. Consulting Services, Delegation and Contracting of RTO Functions and Bundled Payment

Proposal

60. First, pursuant to Section 8.4 of the ITC Agreement, GridAmerica has agreed to provide consulting services for Midwest ISO in the area of transmission best practices, given National Grid's "cutting-edge" experience in operating transmission systems. Through the consultancy service GridAmerica will provide Midwest ISO with advice on enhancing existing assets, asset management and replacement, lifetime asset rating management, safety matters, latest technology applications, real time monitoring capability and rating, matters relating to maintenance of facilities and outage optimization, both before and during implementation of day ahead realtime markets.

61. Second, Applicants propose that certain RTO functions be provided by GridAmerica under contract to Midwest ISO. Schedule 5A (Column 5) to the Operation Agreement includes the additional functions that are contracted by Midwest ISO to GridAmerica. Under the ITC Agreement, GridAmerica personnel will be located in Midwest ISO's facilities to perform the contracting functions.

62. Third, Applicants propose to perform certain delegated RTO functions. The proposed delegation of functions between Midwest ISO and GridAmerica are discussed in the Midwest ISO ITC Agreement and in Schedules 2, 5 and 6 to the Midwest ISO ITC Agreement, in the Operation Agreement and a table is provided in Schedule 5A to the Operation Agreement. Schedule 5A (Columns 2 and 6) includes a description of the functions delegated to GridAmerica. The Applicants state that the delegated functions are consistent with those permitted in TRANSLink.

63. Section 4.1.2 of the Midwest ISO ITC Agreement states that prior to full operations pursuant to Schedule 5, development of the GridAmerica systems and assets

²⁵However, we note that if the new transmission owner remained in Midwest ISO, a new five year term would apply from the date the new transmission owner signs the agreement. The five year term would also apply to National Grid if it becomes a transmission owner within Midwest ISO.

must be completed and integrated in Midwest ISO systems and that the parties must agree on procedures for implementing the functions in that schedule.

Intervenors' Comments

64. DTE contends that the consulting relationship²⁶ between Midwest ISO and National Grid should be clarified or eliminated to ensure that National Grid (1) is not given undue influence over Midwest ISO and (2) does not receive windfall compensation for such consulting services.

65. PSEG Companies assert that the proposed compliance filing exceeds the scope of the July 31 Order in ways that could undermine the functionality of Midwest ISO. PSEG Companies argue that these extraneous proposals split the functions of GridAmerica and Midwest ISO in ways that hinder effective RTO operations, regional trading, and one-stop shopping. DTE Energy similarly argues that the GridAmerica proposal exceeds the functions permitted to be delegated in TRANSLink and in the April Order.²⁷

66. Mirant describes Schedule 5 and Schedule 5A as containing very limited information as to the slicing and dicing of the RTO functions between Midwest ISO, GridAmerica and the GridAmerica transmission owners. Mirant requests that Applicants be directed to provide, for stakeholder review and comment, protocols and rate schedules prior to these being filed with the Commission.²⁸

67. Mirant asks that the Commission not approve the GridAmerica filing until the Commission has the opportunity to review and receive comment on the GridCo filing. PJM states that it plans to file amendments to its tariff in the next several weeks that

²⁶Section 8.4 of the Appendix I ITC Agreement states the following:

GridAmerica will provide a consultancy service to Midwest ISO to assist Midwest ISO in the development of transmission best practices and will provide Midwest ISO with advice on enhancing existing assets, asset management and replacement, lifetime asset rating enhancements, safety matters, latest technology applications, real time monitoring capability and rating, matters relating to maintenance of facilities and outage optimization, both before and during implementation of day ahead and real time markets.

²⁷See PSEG Companies Protest at 8 and 9 and DTE Energy at 14-16.

²⁸See Mirant Protest at 11.

address the split of functions between an RTO and an ITC in a market context and requests that the Commission's ruling in the docket not establish precedent for the split of functions in a market context.²⁹

Response

68. Applicants respond to DTE Companies' concerns by stating that there is no reason for uncertainty about the scope of the consulting services GridAmerica will provide to Midwest ISO. Applicants maintain that Section 8.4 is explicit about the scope of the consulting service GridAmerica provides. Moreover, Applicants claim that it is clear from the description that the consulting service benefits Midwest ISO, its members and customers, including the DTE Companies.

69. Applicants state that Intervenors fail to recognize that the functions allegedly violating the Commission's orders in TRANSLink and in the April Order are functions that GridAmerica will perform as a contractor to Midwest ISO rather than functions that GridAmerica will perform in its own right. Applicants contend that the Commission recognized in Order No. 2000 that there are a variety of ways an RTO can fulfill its RTO functions, including contracting with a third-party to perform these functions.³⁰

Commission Determination

70. We believe that the executed ITC Agreement and Operating Agreement represent progress in developing a fully functional ITC under Midwest ISO's umbrella. However, we are concerned with GridAmerica's proposal to serve as a consultant to Midwest ISO regarding transmission best practices and to take on RTO functions under contract to Midwest ISO.

71. First, GridAmerica has agreed to provide consulting services for Midwest ISO in the area of transmission best practices, given National Grid's "cutting-edge" experience in operating transmission systems. Since National Grid will have economic interest in GridAmerica, we are concerned that this advice cannot be completely objective. The consultancy service also gives us concerns since the agreements provide no protocols as to how the advice provided by GridAmerica as a consultant will be implemented by Midwest ISO (e.g., whether it will go through Midwest ISO's stakeholder process). We

²⁹See, Mirant Protest at 11 and PJM Protest at 2.

³⁰See Applicants' Response at 14 and 15 where they cite to Order No. 2000 at 31,037.

find that this consultancy service goes beyond the authority prescribed in TRANSLink for an ITC. This is a service not envisioned when we defined the role of an ITC under the umbrella of Midwest ISO in TRANSLink.

72. While we are concerned about the role of National Grid acting as a consultant for transmission best practices within Midwest ISO's footprint, we recognize that National Grid could bring significant benefits as a consultant to Midwest ISO, given its experience with managing transmission assets, but also remind the parties that Midwest ISO's final authority in approving transmission facilities in the GridAmerica region that affect non-GridAmerica facilities in other areas of Midwest ISO, cannot be compromised through such best-practices consultancy and that Midwest ISO must review potential transmission (wires) and non-wires solutions objectively. Therefore, we will permit GridAmerica to perform these consulting services for one year from the service commencement date. If, after one year, Midwest ISO determines that it continues to need such consultation services, Midwest ISO is required to issue a Request For Proposal (RFP) and seek competitive bids for this consultancy service.

73. Similarly, we are concerned with the proposal that Midwest ISO will contract out certain of its RTO functions above and beyond what we approved to be delegated in TRANSLink. We find that the contracted work raises questions of GridAmerica's ability to impartially perform the duties as a contractor, especially with regard to the function of prescreening transactions that source or sink outside of the GridAmerica footprint, as GridAmerica as a for-profit ITC has an economic interest to favor transactions that sink within its footprint over those that only source, as further discussed below. We are also concerned that this contractual delegation of functions may be inconsistent with the Midwest ISO's ability to implement a single security constrained economic dispatch of its market on Day Two and under SMD. We are also concerned with GridAmerica's proposal to locate personnel in Midwest ISO's control facility in Carmel, Indiana. It is unclear what functions will be performed by the GridAmerica employee.

74. However, we will permit Midwest ISO to contract out the proposed RTO functions for an interim period given Midwest ISO's commitment that GridAmerica, as a contractor, is subject to Midwest ISO supervision. We will further require vigilant oversight by Midwest ISO's market monitoring unit in performing these contracted functions. This will provide Midwest ISO with assistance during this transition period where its region is expanding rapidly, to ensure an easy transition period to allow for full integration.

75. Therefore, we will accept these contracted services with three caveats: a) GridAmerica's activities as a contractor must be under the supervision of Midwest ISO, b)

the contracted services must be limited to a specified transition period³¹ that Midwest ISO must file and support, and c) protocols must be filed that describe the contracted work, including the work of any personnel located in Midwest ISO's facility. In the protocols just mentioned, Applicants must file language that addresses the responsibilities of GridAmerica as a contractor to Midwest ISO in addition to language addressing the responsibilities of Midwest ISO, GridAmerica and GridAmerica Three that are generally described in columns 4, 6 and 7 of the Schedule 5A.

76. With regard to the delegated functions (see column 6 of Schedule 5A), we find that these are generally consistent with those permitted in TRANSLink and the April Order and approve these except as conditioned below, in each functional area. However, in every functional area, we require that Applicants submit detailed protocols consistent with TRANSLink.

77. With regard to the contracted and delegated functions, the protocols must provide that in the event of a dispute over operational authority, Midwest ISO's decision prevails.

78. To address Mirant and PJM's concerns, we will not delay acting on the Applicants' proposal here and will address the GridCo filing when it is filed.

79. In summary, we will require that Applicants submit a start-up plan, a description of how the control areas will be consolidated operationally under the GridAmerica ITC, definitions (e.g., for "Scheduling Entity" and "prescreening") as appropriate, rate schedules and protocols governing the relationships between the RTO, ITC and transmission owners upon commercial operations. Applicants should clearly explain the extent to which parties' roles will evolve (e.g., from a transition period to full operations). Rate schedules and protocols must be vetted with stakeholders prior to filing with the Commission.

80. Finally, we are concerned with the bundled, negotiated payment of \$12 million which is intended to provide compensation for three categories of service: (1) a fee for consulting services; (2) the RTO functions GridAmerica performs under contract to Midwest ISO; and (3) the delegated RTO functions GridAmerica performs in its own right. The GridAmerica Participants purport that Midwest ISO's payment to GridAmerica was negotiated at arm's length and was authorized by the independent Board of Directors of Midwest ISO and therefore need not be subject to Commission review.

³¹This transition period may not extend beyond implementation of SMD or Midwest ISO's Day Two congestion management system, whichever is earlier.

81. The \$12 million payment was strictly a negotiated payment agreed to by the parties, and the filing does not contain any information to document or support the proposed payment. While we agree that the consulting fee portion is market-based and may be negotiated, the other two categories are clearly for cost-based services and are therefore subject to Commission approval. Therefore, we will require that the parties submit a compliance filing to subdivide the \$12 million payment into the three categories. Supplying this cost information will also establish a basis in the event Applicants find it necessary, or are directed, to make any adjustments in the future to the costs associated with the delegation and contracting of RTO functions, such as any adjustments that may be required as a result of the proceeding regarding the unbundling of Midwest ISO's Schedule 10 Adder or such adjustments that may be necessary to comply with a final rule under SMD. We further require Midwest ISO, after the first year, to demonstrate that the payments to GridAmerica for the contracted and delegated functions are less than the cost of Midwest ISO performing the functions. Additionally, the itemization of the amount negotiated for the consulting services will be necessary given our action herein that such service with GridAmerica may end, or be renegotiated after the required RFP, after a one year period.

82. Consequently, we will approve the \$12 million fee for the first year of service, subject to our review of the cost-based portion of the fee at a later date.

83. We will address each of the proposed delegated and contracted services and protesters' concerns below.

2. Delegated and Contracted Services

84. For a description of the Applicants' proposal, please reference Appendix C to this order which incorporates Applicants' proposed Schedule 5A to their Operation Agreement, mentioned previously. Also see Schedules 2 and 6 to the ITC Agreement and Articles 4 through 9 of the ITC Agreement for related information.

85. We remind parties that some of the operational control allowed at this time is permitted because it is consistent with today's markets in Midwest ISO. With the implementation of SMD and the implementation of Day Two congestion management, some of these operational elements may have to be modified. We expect that GridAmerica would implement any necessary modifications to its operations to support Midwest ISO's locational marginal pricing and other aspects of SMD on a unified, region-wide market basis.

Operational Authority and Short-term Operational Planning

Intervenors' Comments

86. PSEG Companies, Mirant, and DTE Energy object to the proposal for scheduling transactions that source or sink in GridAmerica's footprint as 1) contrary to TRANSLink, where they state the ITC was permitted only to control transactions that source and sink in the ITC's footprint³² and 2) potentially impacting flowgates and transactions occurring in the rest of the RTO. DTE Energy argues that GridAmerica would be able to favor those transactions that it has prescreened over other transactions that are not prescreened (i.e., transactions that do not source or sink in the GridAmerica footprint). AMP-Ohio argues that the proposal fails to afford transmission users one-stop shopping.

87. Coalition Customers contend that Applicants have not explained how efficiencies are achieved if a scheduling function is delegated from Midwest ISO to GridAmerica, which must, in turn, come back to Midwest ISO to obtain the system support necessary to perform the function. They object to GridAmerica using its own tagging systems as inconsistent with the objective of a single functional market. Coalition Customers state that GridAmerica has not justified the need for transmission outages in GridAmerica not being visible to Midwest ISO until approved by GridAmerica.³³

88. Mirant argues that GridAmerica should not have authority to approve generator maintenance outages because the ITC may discriminate in favor of its transmission interests in exercising this authority. Thus, Mirant maintains that Midwest ISO should retain this authority.³⁴

Response

89. Regarding concerns that GridAmerica will prescreen schedules with source or sink in GridAmerica, Applicants state that the Commission has recognized in Order No. 2000 that there are a variety of ways an RTO can fulfill its RTO functions, including

³²See PSEG Companies Protest at 10 and 11, Mirant Protest at 6 through 10, and DTE Energy Protest at 16 and AMP-Ohio Protest at 14.

³³See Coalition Customers Protest at 14-17.

³⁴See Mirant Protest at 6-10. See also PSEG Companies Protest at 10-11, DTE Energy Protest at 16.

contracting with a third-party to perform these functions.³⁵ Responding to PSEG Companies concerns that Schedule 6 allows Applicants to control schedules with source or sink in GridAmerica, Applicants state that Schedule 6 only deals with physical capabilities, whereas Schedule 5 deals with authority. Applicants are willing to modify Schedule 6 accordingly.³⁶

Commission Determination

90. We are concerned regarding Applicants' proposal for GridAmerica to prescreen transactions that source or sink in its footprint.³⁷ The proposal exceeds the requirements in TRANSLink and in the April Order. In addition to internal-only transactions, transactions covered by this proposal include an endpoint outside of GridAmerica. GridAmerica would presumably be indifferent among a set of transactions that sink in GridAmerica but have different origins (in either case GridAmerica receives the entire payment). However, GridAmerica would not be indifferent if a transaction sourced in GridAmerica, but sank outside of GridAmerica (in which case GridAmerica receives nothing). Given GridAmerica's financial interest in transmission assets in its footprint and the differing economic incentives of these transactions, GridAmerica has not explained how it can prescreen these transactions as a party independent of market interests.

91. We will require that Applicants modify Schedule 6 so as not to contradict Schedule 5 and allow the proposed contracting to GridAmerica to prescreen for transactions which source or sink in GridAmerica and for maintenance outages of critical transmission facilities in GridAmerica for a specified transition period to facilitate start-up of operations subject to the caveats mentioned previously that include, among other things, Midwest ISO's final authority over GridAmerica. Midwest ISO must ensure that it monitors the economic and physical impacts of transactions prescreened by

³⁵Order No. 2000 Regional Transmission Organizations, FERC Stats. & Regs. [1996-2000 Reg. Preamble] ¶ 31,089 at 31,037 (1999).

³⁶Response at 15 and 16. Applicants state at 16 that they are willing to modify Schedule 6 to ensure that the description of the scheduling system's capability does not contradict Schedule 5.

³⁷GridAmerica also proposes to prescreen maintenance outages of critical transmission facilities in its footprint to ensure coordination with outages of transmission facilities outside the footprint.

GridAmerica on the Midwest ISO region. Midwest ISO must also ensure one-stop shopping for its customers through its protocols.

92. We stated in the April Order that ITCs may tag and schedule internal-only transactions. We also found that the ITC's proposal to control generation and transmission outages within its region, subject to RTO oversight for critical transmission facilities, was a rational example of the type of coordination between the ITC and the RTO that is needed.³⁸ Here, we are allowing GridAmerica to prescreen other transactions and other facilities for a specified transition period to facilitate start-up of operations subject to Applicants meeting our requirements.

Short-term Reliability

Intervenors' Comments

93. PSEG Companies and MJMEUC are concerned that GridAmerica may routinely take action to preserve the security of its system before requesting assistance from Midwest ISO. Such a broad use of power is possible, they note, because this provision is not limited to emergencies.³⁹

Response

94. Applicants state that the Commission in TRANSLink and in the April Order did not limit the ITC's ability in the way that PSEG Companies allege; but, that the Commission permitted the ITC to take corrective action for reliability inside the footprint under RTO supervision.⁴⁰

Commission Determination

95. Midwest ISO is responsible for ensuring short-term reliability throughout its region. While GridAmerica may take corrective actions inside its footprint, GridAmerica's actions must be subject to Midwest ISO operating protocols. These protocols should, among other things, address data sharing between Midwest ISO and GridAmerica and direct how and under what circumstances GridAmerica may take

³⁸See the April Order at 61,437.

³⁹See PSEG Companies Protest at 10 and MJMEUC Protest at 11.

⁴⁰See Response at 18.

corrective actions within its footprint, before requesting assistance, for conditions including, but not limited to, emergency conditions. This is consistent with our rulings in TRANSLink and the April Order.

RTO Function No. 1: Tariff Administration and Design

Intervenors' Comments

96. DTE Energy questions language in Schedule 5A under work contracted by Midwest ISO to GridAmerica and argues that all transmission service in the Midwest ISO footprint should be handled through the Midwest ISO OASIS.⁴¹

Response

97. Regarding concerns of GridAmerica approving transmission service not handled by the Midwest ISO OASIS Automation, Applicants again cite to Order No. 2000 and state that there are a variety of ways an RTO can fulfill its RTO functions, including contracting with a third party.⁴²

Commission Determination

98. Applicants should provide detailed protocols on the use by all parties of the Midwest OASIS site and demonstrate that Midwest ISO will remain in control of the region's single OASIS as required by Order No. 2000 and in TRANSLink.⁴³

99. Applicants should explain and support any transition or initial periods under the settlement process as alluded to in this proposal.

RTO Function No. 2: Congestion Management

100. No comments were filed addressing this function.

⁴¹See DTE Energy Protest at 15.

⁴²See Applicants' Response at 14 and 15 where they cite to Order No. 2000 at 31,037.

⁴³See TRANSLink at 61,470.

101. Please see our previous discussion regarding the proposed work contracted by Midwest ISO to GridAmerica to assist Midwest ISO in development of market-based congestion management and incentive rate structures and our requirements for this contracting.

RTO Function No. 3: Parallel Path Flow

Intervenors' Comments

102. PSEG Companies object to Midwest ISO granting to Grid America the responsibility to monitor all critical transmission facilities in its footprint for parallel path flow. PSEG Companies assert that in TRANSLink, the Commission permitted an ITC to take on major parallel path flow responsibilities only during emergencies. They urge the Commission to limit any allocation of functions to those permitted in TRANSLink and request that any temporary provisions in this area be subject to a termination clause coincident with a functioning RTO and market.⁴⁴

Response

103. Regarding concerns that GridAmerica will take on parallel path flow responsibilities outside of an emergency, Applicants state that the Commission has recognized that there are a variety of ways an RTO can fulfill its functions, including contracting.⁴⁵

Commission Determination

104. Regarding Applicants' proposal for GridAmerica, under contract to Midwest ISO, to monitor and recommend actions for Midwest ISO to take to address flows that affect critical transmission facilities within GridAmerica's footprint, please see our previous discussion regarding the proposed work contracted by Midwest ISO to GridAmerica and our requirements for this contracting. One such requirement is that this contracting provision be limited to a specified transition period. Regarding Applicants' proposal to delegate tasks to GridAmerica and the GridAmerica Three, Applicants must provide detailed protocols that further explain their proposal. These protocols should, for example, address emergency versus non-emergency conditions.

⁴⁴See PSEG Companies Protest at 11.

⁴⁵See Applicants' Response at 14 and 15 where they cite to Order No. 2000 at 31,037.

RTO Function No. 4: Ancillary Services**Intervenors' Comments**

105. Mirant believes that Midwest ISO should be the sole source of ancillary services, and if the Commission declines to modify its direction in TRANSLink, Mirant requests removing the language, "will propose and implement approved provision of ancillary services allowed."⁴⁶

106. Duke objects to the lack of clarity with respect to the procurement of reactive power and voltage control. It is concerned that this provision may reflect an intention or plan for GridAmerica to procure Schedule 2 ancillary services from affiliated generation under pre-existing contracts or current OATT schedules rather than considering all generators on an equal footing as potential sources of ancillary services in the ITC. Duke requests that the Applicants be directed to explain how GridAmerica will procure generation-based ancillary services, including reactive power and voltage support.⁴⁷

Response

107. Applicants state that GridAmerica will procure ancillary services from the control area in which the load is located using the transmission owners' OATT schedules for ancillary services in accordance with Appendix E of the Midwest ISO Agreement. Applicants confirm that GridAmerica will implement audits of the process by which ancillary services are obtained.⁴⁸

Commission Determination

108. We find that Duke's concern about the ability of generators to be considered on an equal footing as possible providers of ancillary services in GridAmerica is unfounded. The Midwest ISO OATT states that Schedules 1 and 2 ancillary services are provided by control area operators, and that Schedule 3, regulation service, may be provided through dynamic scheduling or self-supply where the transmission provider determines that the

⁴⁶See Mirant Protest at 6.

⁴⁷See Duke Protest at 6. Duke states that ATSI has entered into a service agreement with its generation affiliate, FirstEnergy, under a tariff that allows FirstEnergy to propose the service terms and charges.

⁴⁸See Response at 19.

alternative arrangements are comparable to the provision of this service by the control area operator.⁴⁹ As to the rates for ancillary services, we expect that these rates will either be the cost-based rates that are currently on file with the Commission under transmission providers' OATTs or will be proposed and justified separately by the Applicants and approved by this Commission.

109. We find that the language, "any financial obligations that are in addition to the standard tariff terms will be borne by GridAmerica in accordance with any contract terms that are negotiated" is vague and should be explained by the Applicants.

RTO Function No. 5: OASIS, Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

A. OASIS

110. No comments or protests were filed.

111. Please see our previous discussion regarding the proposed work contracted by Midwest ISO to GridAmerica to coordinate responses to transmission service requests and our requirements for this contracting.

B. ATC and TTC

Intervenors' Comments

112. DTE Energy objects to the proposal because it does not provide that the GridAmerica systems, which will calculate Available Transmission Capability (ATC) on an interim basis, will meet criteria developed by Midwest ISO; nor does the agreement state that it will meet Midwest ISO protocols, a condition set by the Commission in the April Order.⁵⁰ DTE Energy is also concerned that the interim period appears to be open-ended.⁵¹

113. PSEG Companies contend that Article 7 of the ITC Agreement appears to give GridAmerica the unilateral right to provide ratings and operating procedures used to

⁴⁹See Midwest ISO OATT, Schedules 1, 2, and 3.

⁵⁰See April Order at 61,435.

⁵¹See DTE Energy Protest at 14 and 15.

calculate ATC and that in the event of a dispute the ITC position prevails. PSEG Companies state that it is unclear what Article 7 delegates to GridAmerica and the Midwest ISO, but that it appears to exceed the scope of authority permitted in TRANSLink, which provides that the ISO shall determine the mechanism by which ATC will be calculated.⁵²

114. Coalition Customers ask why, if the data and other services to perform this function currently reside with the Midwest ISO, is Midwest ISO delegating the underlying function to an ITC for a sub-region within the RTO's footprint. They further argue that Applicants have not explained what efficiencies are achieved through the proposal.⁵³

Response

115. Applicants respond to DTE Energy and state that GridAmerica and the Midwest ISO are aware of the need to agree on procedures for implementing the delineation of functions and that these procedures will include protocols and criteria for calculating ATC and Available Flowgate Capability (AFC). Applicants answer PSEG Companies and state that Schedule 5 does not provide that GridAmerica will provide procedures for calculating ATC on a long-term basis; rather the Midwest ISO will calculate AFC and ATC on a long-term basis.⁵⁴

Commission Determination

116. Please see the previous discussion with regard to the proposed work contracted by Midwest ISO to GridAmerica and our requirements for this contracting, and the discussion under "Cost and Rate Related Issues - Cost Allocation" with regard to the regional benefits that we anticipate that GridAmerica will bring to transmission owners and ITCs in Midwest ISO.

117. In the April Order, we accepted the proposal for an ITC to calculate ATC/AFC on an interim basis subject to approval by the RTO and consistent with the RTO's processes.

⁵²See PSEG Companies Protest at 9. See also DTE Energy Protest at 14.

⁵³See DTE Energy Protest at 14, PSEG Companies Protest at 9 and Coalition Customers Protest at 15.

⁵⁴Response at 17.

Regarding the ambiguity mentioned by PSEG Companies, we trust that the protocols to be submitted by Applicants will be clear and comprehensive.

118. GridAmerica Three must provide both Midwest ISO and GridAmerica with the base information used to populate the ATC/AFC engine so that Midwest ISO can validate GridAmerica's interim calculation of ATC/AFC.

RTO Function No. 6: Market Monitoring

119. No comments were filed addressing this function.

120. To the extent that this filing completely describes the delegation of functions in this area (there is no delegation nor contracting of this function), we accept the proposal and do not require protocols and additional support.

RTO Function No. 7: Planning and Expansion

Intervenors' Comments

121. Coalition Customers state that GridAmerica should not be permitted to adopt or implement any stand-alone transmission plans unless the plan is approved by Midwest ISO.⁵⁵

122. AMP-Ohio objects to Article 9 stating that this article gives GridAmerica the responsibility for the terms and conditions of generator interconnection (provided that FERC approves those terms and conditions as consistent with its rulemaking in Docket No. RM02-1-000). AMP-Ohio argues that Applicants have not explained why all generator interconnections within the RTO should not be subject to uniform terms and conditions, and be subject to a single tariff - the Midwest ISO tariff. AMP-Ohio views this as an issue of allowing transmission users to obtain services through one-stop shopping.⁵⁶

123. Regarding the proposal to locate a GridAmerica employee in the Midwest ISO facility, PSEG Companies argue that it is unclear what functions the GridAmerica employee would have and whether the ISO is ceding control of the control room to

⁵⁵See Coalition Customers Protest at 15 and 16.

⁵⁶See AMP-Ohio Protest at 13 and 14.

GridAmerica employees. They believe that neither GridAmerica nor any other market participant should be permitted to serve as a consultant to Midwest ISO.⁵⁷

Response

124. Applicants respond at 7 that the consultancy is for the benefit of Midwest ISO and will make National Grid's world class engineering and expertise available to the benefit of all of Midwest ISO's members.

Commission Determination

125. In the April Order, we accepted the proposal that an ITC may be responsible for planning and expansion of its system as long as the RTO has ultimate authority when there are material impacts outside of the ITC, retains authority for the region, and can direct expansions as required. In the April Order and in this order, we require that Applicants provide protocols. In their compliance filing, Applicants should also submit protocols for the generator interconnection process.

126. ITC Agreement, Article 8.2, provides that the parties agree to develop and implement coordinated planning processes and protocols granting to GridAmerica greater discretion and authority to plan its system to meet customer needs than that currently granted to owners under Midwest ISO Agreement, Appendix B. It further states that to the extent required by applicable law, any such plan shall be approved by the Commission prior to implementation.

127. The Commission is in the process of establishing a standardized transmission service and wholesale electric market design. Through Standard Market Design, we intend to provide a level playing field for all entities that seek to participate in wholesale electric markets. If Applicants wish to modify the planning framework in Appendix B, they must make the proposed modifications available to all owners for comments, ensure that the proposed modifications are consistent with our discussions in the SMD NOPR, Order No. 2000, Commonwealth and in the April Order⁵⁸ and file them as proposed changes to Midwest ISO Agreement, Appendix B.

⁵⁷See Coalition Customers Protest at 16, AMP-Ohio Protest at 14 and PSEG Companies Protest at 10.

⁵⁸See Commonwealth Edison Company, et al., 90 FERC ¶ 61,192 (2000) (Commonwealth) at 61,617-18 and April Order at 61,439-40.

128. Schedule 5A provides that, under contract, GridAmerica will (1) assist Midwest ISO in developing a regional plan that improves the capability of the transmission system by identifying engineering solutions and ensuring that secure and economically efficient plans are developed and to make recommendations, (2) administer and process interconnection requests for the GridAmerica footprint, and (3) coordinate planning in respect of ITCs under common management with GridAmerica in other RTOs. Again, we remind the parties that Midwest ISO's final authority, in approving transmission facilities in the GridAmerica region that affect non-GridAmerica facilities in other areas in Midwest ISO, cannot be compromised through this contracting and that Midwest ISO must review potential transmission (wires) and non-wires solutions objectively.

E. Cost and Rate Related Issues

129. Applicants' proposal provides for several different payments to be made, some prior to commencement of operations and some annually. The Applicants state that costs associated with these payments (with the exception of costs related to a \$3.5 million management fee) will be included in Midwest ISO's Schedule 10 administrative adder and thus will be recovered from all loads in the Midwest ISO region. The Applicants state that the Midwest ISO Schedule 10 adder will not increase as a result of passing through these costs.

130. The payments provided for in the Midwest ISO ITC Agreement, to be paid by Midwest ISO, include the following:

131. A. Prior to the Control Date, Midwest ISO will make a one-time payment to GridAmerica of up to \$36.2 million to reimburse the GridAmerica Participants for actual costs incurred in obtaining all the necessary services and assets to carry out its obligations, and for their Alliance RTO development costs, and allowing Midwest ISO unrestricted access to these assets.⁵⁹ The GridAmerica Participants also state that the \$36.2 million includes up to \$10 million in start-up costs funded by National Grid that (1) GridAmerica will partially reimburse to National Grid if the Transmission Service Date does not occur, or (2) Midwest ISO will reimburse in full if the Transmission Service Date does occur.

132. B. Midwest ISO will compensate GridAmerica \$12 million annually for its performance of the required functions set forth on Schedule 5 (including functions which

⁵⁹See Midwest ISO ITC Agreement, Article 4.1.3(d).

are the responsibility of Midwest ISO but which have been contracted out to GridAmerica) and its consulting services in the area of transmission best practices.⁶⁰

133. C. Midwest ISO will refund \$18 million, plus interest, to Ameren to reimburse Ameren for the amount it previously paid when it opted to leave Midwest ISO to join Alliance pursuant to the terms of a settlement approved in Illinois Power Company.⁶¹

134. In addition, the LLC Agreement provides that the GridAmerica Companies will pay National Grid a management fee of \$3.5 million each year for the first three years, subsequently reduced to \$2.5 million per year, and adjusted for inflation beginning Year 6.⁶²

1. Cost Support

Intervenors' Comments

135. Many of the protestors raise the issue of the filing's lack of cost support and point out that, without cost support, none of the payments provided for in the agreements have been shown to be just and reasonable.

136. Several intervenors request that the Commission refrain from approving the concept of Midwest ISO's commitment to pay untold millions of dollars without evaluating the actual costs involved and the returns that Midwest ISO will receive in exchange.

137. Although the GridAmerica Participants state that Midwest ISO's Schedule 10 costs will not increase as a result of the costs incurred by Midwest ISO, Intervenors assert that Applicants must file meaningful support in order to demonstrate that costs have been justifiably and reasonably incurred.

138. Various reasons were provided by protesters to justify the need for more cost support, including:

⁶⁰See Midwest ISO ITC Agreement, Article 13.

⁶¹See Midwest ISO ITC Agreement, Article 4.1.3(e). See also Illinois Power Company, 95 FERC ¶ 61,183, order on reh'g, 96 FERC ¶ 61,206 (2001).

⁶²See LLC Agreement § 6.3(a)(I).

(1) The Midwest ISO TOs state that they are unable to ascertain the rate of return used, overhead and A&G costs, depreciation lives, labor costs, or taxes included in the \$12 million fee. They state that such information would allow parties to better evaluate which portions of the \$36 million and \$12 million fees relate solely to the provision of service to the GridAmerica zones. They also note that no information is provided regarding the allocation of these costs;⁶³

(2) The Midwest ISO TOs state that Applicants failed to demonstrate that the systems Midwest ISO will be paying for do not duplicate systems already in place;

(3) While GridAmerica is to be reimbursed for "actual costs," the Commission ruled in Alliance that it would allow the recovery only of "prudently incurred" costs. Although no support exists to verify this, AMP-Ohio suspects an in-depth review would reveal significant imprudently incurred costs. AMP-Ohio and others stress that the Commission should adhere to its prudence and verification requirements for flowthrough of the Alliance start-up costs; and

(4) AMP-Ohio objects to the \$12 million payment because it sets no time limit on the payment and offers no support for the amount. AMP-Ohio complains that, without support, it is impossible to determine the extent to which the payment is cost-based (if designed to reimburse GridAmerica the cost of performing its function) or value-based (if designed to reflect costs avoided by Midwest ISO).

139. Other protestors ask for various conditions and clarifications, including:

(1) DTE Energy asserts that the BridgeCo/Alliance Start-Up Cost provisions should be clarified (1) to provide that only the portion of Alliance RTO start-up costs contributed by FirstEnergy, Ameren, and NIPSCO are recoverable through the instant filing, and (2) to confirm that DTE and its subsidiary International Transmission, which has an ownership interest in BridgeCo and is owed money by BridgeCo, are free to seek recovery of prudently incurred start-up costs;

(2) Since the performance of certain functions exceeds the authority that should be given to an Appendix I entity, DTE Energy asserts that compensation should be adjusted in line with the limited grid functionality that an Appendix I entity can take on, and Midwest ISO should ensure that customers are not making double payments for services to both Midwest ISO and National Grid;

⁶³See Midwest TOs Protest at 8.

(3) MJMEUC complains that withdrawing participants should have to reimburse upon exit a pro rata share of the up to \$36.2 million, subtracting any verifiable payments for identified, retained, and useful capital assets, and then multiplying by (a) an appropriate fraction representing that participant's share of GridAmerica, and (b) the time fraction remaining on a reasonably lengthy term of now-anticipated Midwest ISO participation, such as twenty years; and.

(4) Regarding the \$18 million payment to Ameren, the Industrials ask that the repayment be: (1) reduced by the costs that Midwest ISO incurred to counter Ameren's withdrawal from Midwest ISO, including legal fees, consulting fees, and revisions to lender agreements; and (2) applied as a credit to Ameren's Schedule 10 charges over time. The Industrials believe such action is necessary to ensure the justness and reasonableness of the return of the exit fee.

140. Finally, the Midwest ISO TOs state that they provide many of the same services that GridAmerica is getting paid to provide, so the transmission owners should also receive compensation. Specifically, the Midwest ISO TOs list the following areas where existing transmission owners perform comparable services: settlements, rating and parameters, maintenance outages, reliability, congestion management, consulting services, ancillary services, and planning.

Commission Determination

141. The July 31 Order stated that cost-related concerns would be more appropriately addressed when Applicants filed the executed ITC Agreement, and directed the GridAmerica Participants to "file an executed ITC Agreement, with the appropriate supporting documents that address the protesters' concerns."⁶⁴ The Applicants have not fully complied with that order, as discussed below.

\$12 Million Payment to GridAmerica

142. As discussed in the foregoing section of this order, we will accept, for Year 1, the \$12 million payment by Midwest ISO for performance of the consultancy service, contracting service and delegated services subject to Midwest ISO providing the unbundled amounts for each of these services in the compliance filing ordered herein. Additionally, we require Midwest ISO, after the first year, to demonstrate that the

⁶⁴See July 31 Order at 61,515 P 33.

payments to GridAmerica for the contracted and delegated functions are less than the cost of Midwest ISO performing the functions.

\$36.2 Million Payment to GridAmerica Participants

143. With regard to the payment of RTO development costs, the Commission has previously stated its intention to allow recovery of all costs prudently incurred in the establishment of the Alliance RTO. Further, since the Schedule 10 adder does not increase as a result of these costs, and because the independent Board of the Midwest has review and approval rights, we will permit the payment of such costs. However, we will require a breakdown of these costs to be filed in sufficient detail to allow the Commission to determine whether all costs being collected are actual costs that were prudently incurred, including a breakdown of legal costs associated with the Illinois Power settlement, as discussed below.

\$18 Million Payment to Ameren

144. This sum is intended to fully reimburse Ameren for the exit fee it paid to leave the Alliance RTO in conjunction with the settlement in Illinois Power. Since the Alliance RTO did not win Commission approval and Ameren subsequently rejoined Midwest ISO, we find that it is both reasonable and equitable for Ameren to recoup its exit payment.

Requested Conditions/Clarifications

145. DTE Energy's concerns regarding the BridgeCo/Alliance Start-Up Cost provisions are unnecessary because other companies are already permitted to file to seek recovery of the start-up costs. With regard to DTE Energy's concern about adjusting compensation in relation to limited grid functionality, our assurance that the delegated functions in the GridAmerica proposal are consistent with TRANSLink should satisfy their concerns for now and our requirement that the \$12 million payment be unbundled will assist in any future adjustments that become necessary or are required to adjust the costs of the contracted and delegated RTO functions.

Compensation for Provision of Comparable Services

146. With regard to the Midwest ISO TO's allegations that they also deserve compensation for performing comparable services, we clarify that GridAmerica is not getting paid to provide the same services as the transmission owners. GridAmerica is compensated only for performing those functions that have been delegated to it by

Midwest ISO. The transmission owners, on the other hand, have not all been determined to be independent and, as such, have not been authorized to perform delegated functions.

Proposed Exit Fee

147. We will deny the request of MJMEUC that withdrawing Participants must refund a pro rata share of the lump sum payment of \$36.2 million. Our requirement that tightens the terms and time frame for which any Participant can withdraw from the agreements we have approved herein has been extended to coincide with the withdrawal rights of the transmission owners. This ruling will help offset the lump sum payment in the event of withdrawal by any participant, as the longer the participant stays the longer they contribute by making payments of the Midwest ISO Schedule 10 Adder.

2. Cost Allocation

Intervenors' Comments

148. Various protestors believe that the \$36.2 million and \$12 million payments should not be recovered from all customers under Midwest ISO's Schedule 10 adder. Instead, they argue that such costs should be borne solely by the customers in the GridAmerica rate zone. Protestors assert that assigning these costs to other rate zones does not follow cost causation principles.

149. With regard to the actual costs which are capped at 36.2 million, which includes the GridAmerica start-up costs and the Alliance RTO development costs, protestors argue these solely benefit or are attributed to the loads in the GridAmerica rate zone. The Midwest ISO TOs and LG&E aver that, if a large portion of the \$36.2 million payment includes legal and consulting fees, which it likely does, it would be a gross injustice for Midwest ISO's transmission owners to foot the bill for legal expenses associated with the former Alliance Companies' failed attempt to establish another RTO which often ran counter to the Midwest ISO TOs' interests.

150. Wisconsin Electric notes that costs associated with the formation of ATCLLC (a transmission owner) are recovered through the ATCLLC revenue requirement and included in ATCLLC's zonal rate, not through Midwest ISO's Schedule 10 adder. Thus, requiring all Midwest ISO customers to pay costs associated with new ITC members would discriminate against those who joined Midwest ISO previously and pay such costs through zonal transmission rates.

151. The Midwest ISO TOs also contend that Midwest ISO fails to explain its departure from the cost structure used in TRANSLink where the TRANSLink loads will pay for the services provided them by TRANSLink. Moreover, in TRANSLink, the Midwest ISO cost adder was unbundled, and Midwest ISO excluded from its costs to TRANSLink costs associated with services provided by TRANSLink rather than Midwest ISO, thus ensuring that loads within zones pay only those costs specifically related to services to those zones.

Commission Determination

152. We will approve the proposal to collect these payments, through the Schedule 10 adder as proposed, subject to the condition on legal fees imposed below and subject to the condition that the Schedule 10 adder will not increase as a result of the inclusion of any of the proposed costs. We believe that the additions of the GridAmerica facilities will bring regional benefits to all transmission owners and ITCs in the Midwest ISO. The integration of GridAmerica facilities into Midwest ISO will enable greater connectivity between load centers in Midwest ISO by providing direct interconnections with the SPP transmission systems and with transmission systems in Michigan, and will not increase the costs to the Midwest ISO market participants. Moreover, we recognize that the consultancy service performed by GridAmerica is intended to provide benefits on a regional basis to Midwest ISO and its customers.

153. Protestors raise legitimate concerns, regarding recovery of legal costs associated with the Illinois Power settlement through the Schedule 10 cost adder. We will defer ruling on this issue until after the Applicants submit the required compliance filing ordered herein. Applicants must provide, as part of this compliance filing to support the \$36.2 million payment, a detailed breakdown of the proposed legal costs and justification for including these legal costs in the Schedule 10 cost adder.

3. Generator Interconnection Rate Provisions

GridAmerica's Proposal

154. Article 9 of the Midwest ISO ITC Agreement provides that GridAmerica is responsible for generator interconnection service within its footprint subject to Commission approval and until such approval, Midwest ISO's interconnection protocols will govern interconnection issues within GridAmerica. Article II of the Operation Agreement governs GridAmerica's duties and rights with respect to interconnection issues between itself and the transmission owners comprising GridAmerica.

Intervenors' Comments

155. Michigan Protesters protest certain interconnection provisions. Michigan Protestors object to provisions that they believe provide for direct assignment of costs for interconnections and network upgrades as inconsistent with Commission policy. Michigan Protesters claim that Article II of the Operation Agreement requires that, to the maximum extent possible, generators and local distribution entities pay for interconnection facilities and network upgrades.⁶⁵

Commission Determination

156. We disagree. Article 9 of the Midwest ISO ITC Agreement clearly states that while GridAmerica will be responsible for interconnection service within its footprint, it is intended "that GridAmerica will fully comply with FERC's policy on generator interconnections."⁶⁶ Additionally, Article II of the Operation Agreement does not provide for automatic direct assignment. For instance, Article II states that in the event that GridAmerica "is not permitted to require an interconnecting Generator or local distribution entity to provide funding in advance, [GridAmerica] shall, to the extent permitted by the Midwest ISO ITC Agreement and the Interconnection Procedures, assist the Transmission Owners to recover their verifiable costs of performing interconnection activities."⁶⁷ We therefore do not believe that these provisions provide solely for direct assignment of costs for interconnections and network upgrades and expect that GridAmerica, as evidenced by Article 9 of the Midwest ISO ITC Agreement, will abide by our interconnection policies.⁶⁸

⁶⁵See Michigan Protesters Protest at 9.

⁶⁶ITC Agreement, Article 9.

⁶⁷Operation Agreement Article II.

⁶⁸See Entergy, 99 FERC ¶ 61,096 (2002) (providing that generators must receive transmission credits plus interest for network upgrades at or beyond the point of interconnection as such facilities benefit all users of the grid and should be borne by all users of the grid).

4. Lost Revenues

GridAmerica's Proposal

157. Section 11.1 of the ITC Agreement provides that in a Section 205 rate case to be filed prior to the date GridAmerica begins operations, Midwest ISO will support the recovery of lost revenues of each of the GridAmerica Three resulting from the elimination of multiple zonal transmission rate charges and the corresponding revenue allocation consistent with the treatment of other Owners and ITCs. GridAmerica reserves the right to proffer as part of such filing, the Alliance rate design endorsed by FERC in its April 25, 2002 Order on Petition for Declaratory Order in Docket No. EL02-65-000, et al.

Intervenors' Comments

158. Michigan Protesters object to the treatment of lost revenue resulting from the elimination of rate pancaking and urge the Commission to reject any lost recovery mechanism that is not directly tied to a transmission owner's revenue requirement. If a surcharge is implemented, it should apply to each customer within a zone based on its own importing patterns. They should not be forced to subsidize those customers within their pricing zone who import substantial power.

159. DTE Energy believes the Commission should clarify that Midwest ISO should remain neutral regarding any lost revenue proposals. Since Midwest ISO is not the entity that will bear the cost of lost pancaking surcharges, it has no business supporting this recovery. The Commission should require each of the GridAmerica companies to undergo a Seven Factor Test to ensure that the rate base has not been inflated in the past, thus leading to an over recovery of alleged lost transmission pancaking revenues.

Commission Determination

160. We have approved the concept of transitional mechanisms such as surcharges to recover lost revenues resulting from the elimination of multiple zonal transmission rate charges.⁶⁹ However, we will rule on the specific issues raised by the commentor at the time the Section 205 filing is made which proposes a specific mechanism. To support the Section 205 filing, GridAmerica must provide adequate support as to the justness and

⁶⁹See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,076 (2002).

reasonableness of the rates being proposed. Section 11.1 of the ITC Agreement provides for a collaborative process with the Owners and other Midwest ISO stakeholders regarding such lost revenues and distribution method necessary to achieve these goals. The parties can use this process to make their case for certain outcomes. We will not preclude Midwest ISO from supporting, or not opposing a method filed by the applicants. Midwest ISO is free to participate and file comments in a Section 205 proceeding as is any other party.

5. Drive-Through and Drive-Out Service

GridAmerica's Proposal

161. Section 11.3.3 of the Midwest ISO ITC Agreement commits Midwest ISO to either discount its total charges in the Midwest ISO OATT for Drive-Out and Drive-Through Service or make a Section 205 application to lower the cap on its total charges.

Intervenors' Comments

162. Michigan Protesters state that the filing does not explain how or to what extent the through and out rate will be discounted or capped, or even if it will be made available to all Midwest ISO transmission customers or just the GridAmerica Three.

Commission Determination

163. We expect that GridAmerica will fully explain its discount proposal, or file support for any change in its Drive-Out and Drive-Through service charge cap when it files its Section 205 filing prior to commencement of service. The Section 205 filing is the proper forum for further explanation and support. Parties will be free to intervene in and/or protest the forthcoming Section 205 filing as it relates to Midwest ISO's proposal for this service charge.

6. Acquisition Premiums

GridAmerica Proposal

164. The Master Agreement details the rights and obligations of the parties divesting transmission facilities to GridAmerica. The transmission owners will have a "put right" to contribute transmission facilities to GridAmerica in exchange for units in GridAmerica at fair market value.

Intervenors' Comments

165. MJMEUC is concerned that the agreements contain numerous references to fair market valuation of transmission facilities transferred to GridAmerica. They request that approval of such provisions should make clear that it does not alter the Commission's policies regarding acquisition premiums and original cost valuation of transmission facilities for rate purposes.

Commission Determination

166. When GridAmerica makes its Section 205 filing, we direct it to fully explain if any rate impact other than original cost pricing is intended by valuing the assets at fair market value. The Commission generally does not permit acquisition premiums to be included in rates unless a cost-benefit analysis is provided.

F. Miscellaneous Contested Provisions under Agreements

1. Open Architecture

GridAmerica's Proposal

167. Under Article 14 of the Midwest ISO ITC Agreement, in the event that GridAmerica acquires or otherwise operates transmission facilities not identified in Schedule 1 to the Midwest ISO ITC Agreement, GridAmerica may choose to designate or assign such facilities as being facilities under its function control of GridAmerica or part of the GridAmerica System. GridAmerica may make such designation on a case by case basis or on a continuous basis at its option. In no event will any such facilities be deemed under GridAmerica's function control or part of the GridAmerica System unless they are located or electrically interconnected to Midwest ISO's systems.

Intervenors' Comments

168. PSEG Companies object to Article 14 of the Midwest ISO ITC Agreement and state that it appears to grant GridAmerica the unfettered discretion to incorporate into the GridAmerica System additional facilities outside the GridAmerica footprint but "located in or electrically interconnected to Midwest ISO system" and may allow GridAmerica to promote piecemeal RTO development contrary to the formation of RTOs based on natural markets. AMP-Ohio objects to Article 14, stating that the article appears to allow GridAmerica to exclude transmission facilities within its footprint and interconnected

with Midwest ISO systems from the "GridAmerica System" and therefore from participation in Midwest ISO.⁷⁰

Commission Determination

169. In the compliance filing ordered herein, we will direct GridAmerica to explain more thoroughly this proposed section and the criteria it will use to determine which entities could participate in GridAmerica.

2. Conflict of Agreements

GridAmerica Proposal

170. Section 3.1 of the proposed ITC Agreement states that non-divesting transmission owners will have the same rights and voting authority as owners under the Midwest ISO Agreement. Section 3.1 also proposes, among other things, that in the event of a conflict between any provision of the ITC Agreement and any provision of the Midwest ISO Agreement, the provisions of the ITC Agreement shall govern.

Intervenors' Concerns

171. Mirant argues, that while there may be certain circumstances in which it is appropriate for the ITC Agreement to trump the Midwest ISO Agreement, these circumstances should be narrowly limited and easily enumerated. Mirant argues that the Commission should direct the GridAmerica participants and Midwest ISO to delete the language in Section 3.1 which states that the ITC Agreement governs in the event of any conflict between the ITC Agreement and the Midwest ISO Agreement and instead direct the GridAmerica Participants to specify the precise conditions or provisions under which the ITC Agreement will govern.

Response

172. Applicants respond that the proposed provision comes directly from the Appendix I Agreement to the Midwest ISO Agreement.⁷¹

⁷⁰See PSEG Companies Protest at 10-12.

⁷¹See Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1, Original Sheet No. 211.

Commission Determination

173. Section 3.1 proposes to give non-divesting transmission owners similar rights and voting authority as owners under the Midwest ISO Agreement. However, later in this section, the provision seems to indicate that, although the non-divesting transmission owners are given similar rights pursuant to the Midwest ISO Agreement, when a conflict arises, the ITC Agreement prevails. This language appears to be inconsistent with the purpose of Section 3.1 which is to give non-divesting transmission owners similar rights as the transmission owners pursuant to the Midwest ISO Agreement. We agree with Mirant that there may be certain circumstances when there is a conflict between the two agreements, in which it may be appropriate for the ITC Agreement to prevail. To reconcile these inconsistencies, we will direct the Applicants to modify the language in Section 3.1 which states that the ITC Agreement governs in the event of any conflict between the ITC Agreement and the Midwest ISO Agreement and direct the GridAmerica Participants to specify the precise conditions or provisions under which the ITC Agreement will govern. While we understand a similar provision may have been included in Appendix I, these agreements are complex and we find it appropriate to require the Applicants to provide more certainty as to which provisions may cause a conflict between the agreements.

3. Most Favored Nations Clause

GridAmerica's Proposal

174. Section 3.2 of the ITC Agreement proposes that in the event that Midwest ISO enters into any agreement or arrangement with any current or future Midwest ISO member or any other ITC, user or transmission customer containing any term with respect to the cost or provision of, or liability for services which are identical or substantially similar in nature to those being provided, and such a term is more favorable (a superior term) than any comparable term contained within the agreement, at the option of GridAmerica and subject to this Commission's approval, if required, the agreement shall be deemed amended, to the extent necessary to incorporate the superior term.

Intervenors' Comments

175. Certain parties argue that the proposed Section 3.2 is essentially a most favored nation clause, and is unjust and unreasonable because GridAmerica participants have not demonstrated any cost basis for this provision and provide no evidence indicating that such a clause is necessary and should be rejected. Others argue that in order to limit potential discrimination, the Commission should order Midwest ISO to adopt a most

favorable nations clause similar to Section 3.2 for all of its transmission owners so that all are treated in a non-discriminatory fashion. Finally, Mirant contends that the language contained in Section 3.2 implies that Commission approval would not be required for an amendment to the ITC Agreement with GridAmerica. Mirant explains that the circumstances contemplated in Section 3.2 provide that the parties are changing terms with respect to the cost or provision of, or liability for services under a Commission filed rate schedule. Therefore, Mirant argues that the parties may not be permitted to deem an agreement amended prior to, or without the acceptance of the amendment by the Commission.

Response

176. GridAmerica only responds to Mirant's argument that the agreement may not be deemed amended prior to, or without the acceptance of the Commission. GridAmerica argues that to the extent Commission approval of an amendment to the ITC Agreement is required, Section 3.2 provides that the amendment will not be effective until approved. However, GridAmerica continues that if an amendment does not require Commission approval there is no reason to delay the effectiveness of the amendment.

Commission Determination

177. We agree that Section 3.2 is essentially a most favored nations provision. However, we believe that such a provision is inappropriate in this agreement and we will therefore direct GridAmerica to delete this provision from the ITC Agreement.

178. The Commission has generally held that a contract rate or discount, or term, must be offered to entities who are similarly situated or face substantially similar circumstances and conditions. However, to allow such an amendment in this context will create an undue administrative burden given the complexity of the agreements, and the number of agreements filed, and expected to be filed, by participants to join Midwest ISO. In this regard, we believe that to approve such a provision at this time will only serve to create contract uncertainty. We are confident that the transmission entities involved in Midwest ISO have worked diligently, and continue to work diligently, with Midwest ISO to obtain fair and equitable agreements applicable to their situations. Given that each participant has joined Midwest ISO at different times and has different requirements to join Midwest ISO, we do not believe it is unduly discriminatory to deny the request that a contract is automatically amended as a result of a future filing where a contention is made that a superior term has been approved. Moreover, our rejection of this provision places GridAmerica on the same footing as the transmission owners that have joined Midwest ISO that do not have a similar provision.

4. Grandfathered Agreements

GridAmerica's Proposal

179. ITC Agreement, Article 5 provides the framework for satisfying pre-existing obligations of the GridAmerica Companies and it states in pertinent part:

5.2 Midwest ISO agrees to assume all rights and obligations under the Ameren, ATSI, and NIPSCO OATT agreements entered into prior to the Control Date . . .

5.3 Midwest ISO will comply with all obligations to provide transmission service incurred by the Ameren Operating Companies, the FirstEnergy Operating Companies, and NIPSCO pursuant to agreements with third parties entered into prior to the effective date of the Ameren, ATSI, and NIPSCO OATTs. . . .

5.4 Midwest ISO acknowledges that Ameren, ATSI, and NIPSCO have certain obligations to transmission customers as a result of orders issued by the FERC or other Governmental Authorities. . . . To the extent that GridAmerica is unable to perform such obligations following the Control Date, Midwest ISO will use its best efforts to perform such obligations on GridAmerica's behalf, consistent with the Midwest ISO Agreement and the Midwest ISO Tariff.

Intervenors' Comments

180. AMP-Ohio objects to ITC Agreement, Article 5, because it is ambiguous, at best and at worst abrogates preexisting agreements. AMP-Ohio points out that while ITC Agreement, Article 5.2 broadly obligates Midwest ISO to assume all rights and obligations under the relevant OATT agreements; ITC Agreement, Article 5.3 apparently narrows Midwest ISO's responsibility to comply with obligations to provide transmission service; and ITC Agreement, Article 5.4 narrows even further Midwest ISO's obligation to act in GridAmerica's stead (if it is unable to perform the obligations) using its best efforts, consistent with the Midwest ISO Agreement and the Midwest ISO Tariff.⁷²

⁷²See AMP-Ohio Protest at 3.

181. AMP-Ohio points out that ITC Agreement, Article 5.2 and ITC Agreement, Article 5.3 apparently distinguish between obligations to transmission customers (Article 5.2) from obligations to provide transmission service (Article 5.3). Such a distinction, coupled with ITC Agreement, Article 5.4's limitation to Midwest ISO using its best efforts to perform the obligations, consistent with the Midwest ISO Agreement and the Midwest ISO Tariff may cause customers to lose transmission related rights granted as the result of merger conditions, settlement agreements and even NRC-license conditions.⁷³

182. Cleveland incorporates by reference AMP-Ohio's Protest. In addition, Cleveland points out that it is in the category of being owed substantial obligations by ATSI as the result of obligations imposed as the result of orders issued by FERC or other Governmental Authorities. Cleveland views these obligations as transmission-related which could very well be discarded under ITC Agreement, Article 5.4.⁷⁴ Cleveland argues, as does AMP-Ohio, that if these rights can be so easily discarded their due process rights would be violated. Cleveland therefore requests that Applicants be directed to honor, or renegotiate, all of their transmission and transmission-related agreements.

Response

183. Applicants respond to the protests by stating that the intent of ITC Agreement, Article 5 is to provide comprehensive protection for rights provided for in the pre-existing obligations of the GridAmerica Companies that may be affected by the ITC Agreement. They argue that transmission service obligations will be honored under ITC Agreement, Article 5.3. They further assert that ITC Agreement, Article 5.4 provides significant assurance to the parties that pre-existing obligations will be met.⁷⁵

Commission Determination

184. We believe that the Intervenor has raised valid concerns about the possibility of their transmission related rights being unilaterally abrogated. We note that in Opinion 453-

⁷³See AMP-Ohio Protest at 3-4.

⁷⁴See Cleveland Protest at 3-4.

⁷⁵See Answer at 25-27.

A⁷⁶ the Commission stated that to the extent that certain transmission owning members of Midwest ISO serve grandfathered load, those transmission owning members will have to take transmission service under the Midwest ISO tariff for the use of the Midwest ISO transmission system to serve the grandfathered agreement customers.⁷⁷ However, Opinion No. 453-A relies on the premises that grandfathered agreements will be left in place during the transition period but parties to those agreements should begin negotiations within three years of start-up to address the post-transition conversion to the Midwest ISO tariff. Moreover, Opinion 453-A states that any modifications to grandfathered agreements should first be a matter of negotiation between the parties to those contracts.⁷⁸ Article 5 of the ITC Agreement should reflect the Commission's rationale in Opinion No. 453-A in the compliance filing ordered below.

G. Section 203 Request - Docket No. EC03-14-000

185. Applicants implicitly request Commission authorization pursuant to Section 203 of the FPA to transfer functional control over their transmission facilities to GridAmerica. However, Applicants have not supported their request under Part 33 of the Commission's regulations.⁷⁹ Therefore, we will require Applicants to file an amendment to their Section 203 request with the information necessary to support their request.⁸⁰ The Commission's Merger Policy Statement and Order No. 642 provide that the Commission will generally take account of three factors in analyzing whether a proposed disposition is consistent with the public interest: (1) the effect on competition; (2) the effect on rates; and (3) the

⁷⁶Midwest Independent Transmission System Operator, Inc. et al., 98 FERC ¶ 61,141 (2002).

⁷⁷Id. at 61, 413.

⁷⁸Id. at 61,414.

⁷⁹See 18 C.F.R § 33.2 (2002).

⁸⁰In order to process their Section 203 request promptly, we direct Applicants to file this amendment separate from the compliance filing required by this order.

effect on regulation.⁸¹ We expect Applicants to address these factors and to identify the transmission facilities to which functional control will be transferred to GridAmerica.
186.

The Commission orders:

(A) The proposed agreements are hereby conditionally accepted for filing, suspended for a nominal period, made effective December 31, 2002, subject to refund, the compliance filing ordered below and to the Commission's orders in Docket No. EL02-65-000, et al.

(B) Applicants are hereby ordered to file, within 60 days of the date of this order, a compliance filing as discussed in the body of this order.

(C) Applicants are hereby ordered to file, 60 days prior to commencement, a Section 205 filing to support the proposed rates for GridAmerica.

By the Commission. Commissioners Massey and Brownell concurring with separate statements attached.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

⁸¹Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

Appendix A

Listed parties have filed notices of intervention or motions to intervene in Docket Nos. ER02-2233-001 and EC03-14-000. Short-hand references to parties referred to in the order are indicated in parenthesis after the name.

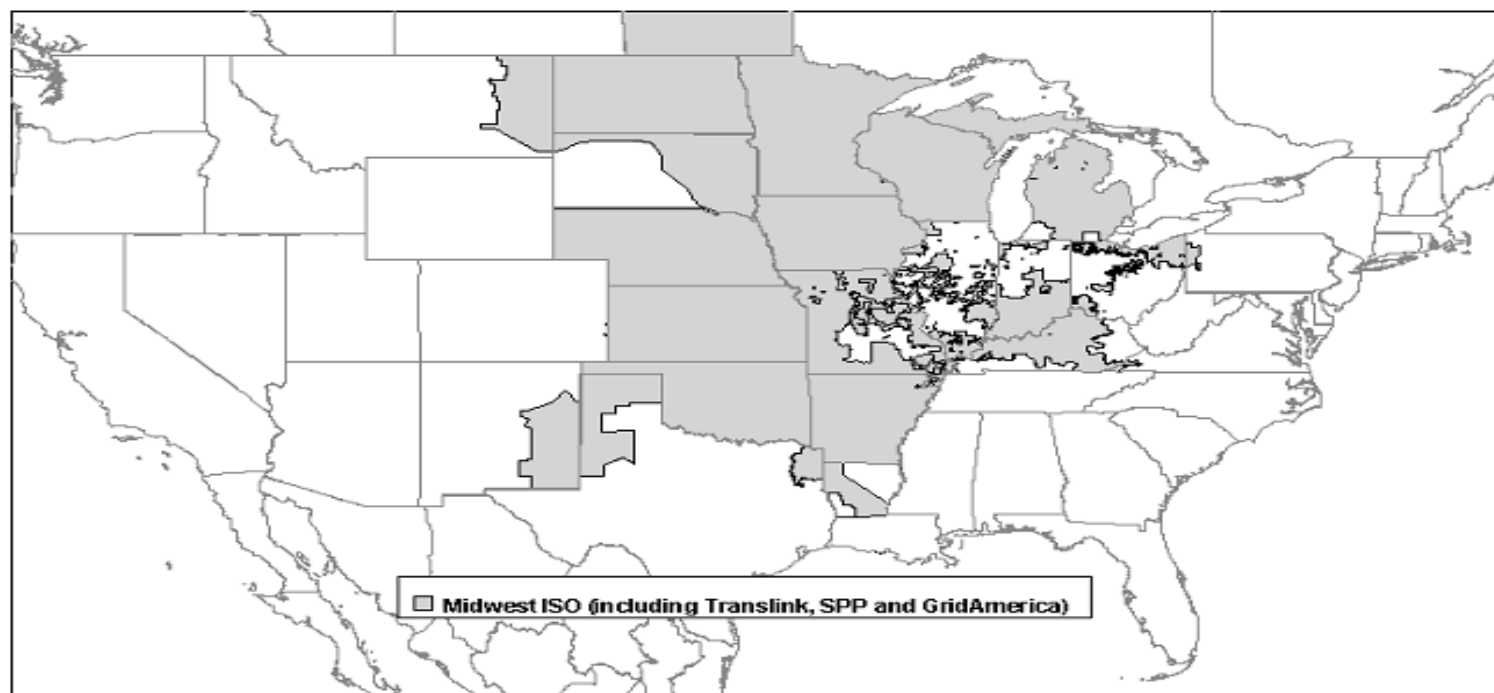
Company Name

American Municipal Power-Ohio, Inc. (AMP-Ohio)
American Transmission Company L.L.C. (ATCLLC)
Arkansas Electric Cooperative Corporation (Arkansas Electric)
Calpine Central, L.P. (Calpine)
The City of Cleveland, Ohio (Cleveland)
Coalition of Midwest Transmission Customers & Industrial Energy Users-Ohio (Coalition Customers)
Consumers Energy Company (Consumers)
DTE Energy Company, Detroit Edison Company, International Transmission Company (DTE Energy)
Duke Energy North America, LLC (DENA)
Exelon Corporation (Exelon)
Illinois Municipal Electric Agency (IMEA)
Iowa Utilities Board (IUB)⁸²
Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E)
Mirant Americas Energy Marketing, LP, and Mirant Zeeland, LLC (Mirant)
Michigan Public Power Agency, Michigan South Central Power Agency, and the City of Wyandotte, Michigan (Michigan Protestors)
MidAmerican Energy Company (MidAmerican)
Midwest ISO Transmission Owners (Midwest ISO TOs or Midwest ISO Transmission Owners)
Missouri Joint Municipal Electric Utility Commission (MJMEUC)
Office of Utility Consumer Counselor
PJM Interconnection, L.L.C. (PJM)
Public Service Electric and Gas and PSEG Resources & Trade LLC (PSEG Companies)
Public Utilities Commission of Ohio (Ohio Commission)
Westar Energy Inc. and Kansas Gas and Electric Company (Westar)
Wisconsin Electric Power Company (Wisconsin Electric)

⁸²The IUB filed a late notice of intervention.

Wisconsin Public Service Corporation and Upper Peninsula Power Company
(WPSC) Wisconsin Public Power Inc. (WPPI)
Wolverine Power Supply Cooperative, Inc. (Wolverine)
Xcel Energy Services Inc. (Xcel)

Appendix B



Appendix C

Schedule 5A - Delegation of Functions between MIDWEST ISO, GridAmerica and GridAmerica Three

Responsibility	RTO	GridAmerica	Functions performed by MIDWEST ISO	Functions performed by GridAmerica under contract to MIDWEST ISO	Functions performed by GridAmerica	Functions performed by individually by GridAmerica Three in their role as Transmission Owner and Control Area Operator
Tariff Administration	Single tariff administered by the RTO.	Unilateral filing rights under sec. 205 for revenue requirements including rate design and incentive rates within its footprint, after consultation with the RTO; separate schedules, but not separate tariff.	Approval of all transmission service except those not handled by MIDWEST ISO OASIS Automation that sinks and sources in GridAmerica footprint respecting all MIDWEST ISO flowgates. Settlement of all transmission service except those that sink and source in GridAmerica although the exception to this provision will not initially apply. One bill to customer including GridAmerica calculated settlement information.	Approval of transmission service not handled by MIDWEST ISO OASIS Automation that sinks and sources in GridAmerica respecting all MIDWEST ISO flowgates. Settlement of transmission service that sinks and sources in GridAmerica although this provision will not initially apply. Transmission of Settlement data to MIDWEST ISO to include on bill.	Settlement of all special services and products offered. Transmission of Settlement data to MIDWEST ISO to include on bill.	Provide GridAmerica with line item charges for billing purposes. This will include: network customer usage information; misc. local, distribution, and facility charges; Interconnection charges and data. Provide local distribution and facility information for Network agreements. TO representation on Tariff Working Group with regard to Rates structure, including determinants and Revenue distribution. Review of IPP interconnection arrangements (with emphasis on local and distribution system impacts).
OASIS	Single OASIS node.	Site page for GridAmerica service under RTO OASIS node.	OASIS maintenance. Link to page for GridAmerica to offer special services or products. Manage the Transmission Service Request queue for all requests	Coordinate response to Transmission Service Request.	Provide link for GridAmerica special services or products.	Provide GridAmerica with Grandfathered data for inclusion on the TO's OASIS page and historical data for OASIS conversion process.
ATC/TTC - interim	RTO assures consistency with its processes.	Calculates ATC/AFC, subject to approval by RTO and consistency with RTO processes.	Validates AFC, ATC, CBM, TRM, and TTC calculation. Provides OASIS reservations and schedules to GridAmerica. Calculates AFC/ATC for all MIDWEST ISO footprint. AFC/ATC overrides AFC/ATC by GridAmerica if disputed.	Calculates AFC/ATC with validated calculation. Provides all schedules to MIDWEST ISO. Loads OASIS with AFC/ATC unless disputed.	Calculates TTC, CBM, TRM based on validated calculation.	Provide GridAmerica with base information for populating AFC/ATC engine and local updates to model as necessary. Provide GridAmerica with advice on determining credible contingencies consistent with NERC standards.
ATC/TTC - long-term	RTO provides inputs for CBM and TRM and calculates ATC.	Determines TTC using RTO formulas and methodologies.	Calculates all AFC/ATC. Validates TTC calculation.		Provides ratings and parameters for transmission facilities to be used in ATC calculation based on validated calculation. To support MIDWEST ISO in determining policy for calculating TTC, ATC, CBM and TRM.	Provide GridAmerica with appropriate technical details of facility load ratings, parameters and voltage limitations.

Appendix C (continued)

Schedule 5A - Delegation of Functions between MIDWEST ISO, GridAmerica and GridAmerica Three

Responsibility	RTO	GridAmerica	Functions performed by MIDWEST ISO	Functions performed by GridAmerica under contract to MIDWEST ISO	Functions performed by GridAmerica	Functions performed by individually by GridAmerica Three in their role as Transmission Owner and Control Area Operator
Short term operational planning (including Maintenance Outages)	RTO approves maintenance for critical transmission facilities.	Coordinates maintenance of generators and non-critical transmission facilities in its area.	Identifies all critical transmission facilities for MIDWEST ISO footprint. Approves all outages except generator and non-critical transmission facilities in GridAmerica.	Optimizes and prescreens maintenance outages of critical transmission facilities in GridAmerica to ensure coordination with outages of transmission facilities outside the footprint so that regional reliability is met in the most economic manner.	Submits maintenance outages of all critical transmission facilities in GridAmerica for MIDWEST ISO approval. Approves maintenance outages of all non-critical transmission facilities and coordinates maintenance outages of all generator facilities in GridAmerica.	Provide Grid America with outage schedule proposals. Work with GridAmerica to understand/alleviate outage scheduling issues. Implement approved transmission facility outages and coordinate generation facility outages as directed by GridAmerica.
Operational Authority	Operates into, out of, and through transactions.	Schedules and physically operates transmission with source and sink inside footprint.	Ultimate approval authority as the Transmission Provider for all schedules in MIDWEST ISO footprint. Will have ultimate authority for any disputes with approvals or schedules.	Prescreens all schedules with source or sink in GridAmerica as Scheduling Entity. Coordinates actions with MIDWEST ISO and will respect any impacts on MIDWEST ISO flowgates.	Approves and implements all schedules with source and sink in GridAmerica as a Scheduling Entity for the Control Areas in the GridAmerica footprint.	Approves e-Tags that source and/or sink in CA. Implement schedules that source and/or sink in CA.
Reliability, Security and Coordination	Responsible for reliability for entire region.	Takes corrective action for reliability inside footprint under RTO supervision.	Monitors all critical transmission facilities in MIDWEST ISO footprint and oversees or directs corrective action in accordance with NERC policy. Monitors and approves GridAmerica actions.	Determine methods by which critical transmission facilities in GridAmerica footprint can be operated in the most economic manner to avoid transmission curtailment under fault conditions and recommends corrective action to ensure compliance with NERC policy.	Implements corrective action in GridAmerica under MIDWEST ISO supervision.	Monitors Control Area (CA) and provide advice to GridAmerica on corrective actions in CA which will be provided to RA as necessary. Implements corrective actions as instructed by GridAmerica and under the direction of GridAmerica and perform regional re-dispatch as required under current agreements (eg. LEER). Perform security analysis for CA/local TO facilities with "local model" and identify potential constraints to GridAmerica and provide advice in determining operating procedures or actions to alleviate such constraints.
Parallel Path Flows	Manages parallel path flow for region.	Assists in the management of parallel path flows during emergencies.	Monitors all critical transmission facilities for parallel path flow and provides remedial action when needed. Directs GridAmerica in management during emergencies.	Monitors all critical transmission facilities in GridAmerica footprint for parallel path flow and recommends corrective action.	Monitors all non-critical transmission facilities in GridAmerica footprint for parallel path flow. Implements corrective action in GridAmerica under MIDWEST ISO supervision.	Implements actions for parallel path flow remediation when directed by GridAmerica.
Congestion Management	Responsible for implementing congestion management.	No responsibilities authorized at this time.	Develops and implements market based congestion management structure for all MIDWEST ISO footprint.	Assists Midwest ISO in development of market based congestion management and incentive rate structures.		

Appendix C (continued)

Schedule 5A - Delegation of Functions between MIDWEST ISO, GridAmerica and GridAmerica Three

Responsibility	RTO	GridAmerica	Functions performed by MIDWEST ISO	Functions performed by GridAmerica under contract to MIDWEST ISO	Functions performed by GridAmerica	Functions performed by individually by GridAmerica Three in their role as Transmission Owner and Control Area Operator
Ancillary Services	Provider of last resort for ancillary services other than scheduling, system control and dispatch; voltage control; and regulation.	Provide ancillary services, scheduling, system control and dispatch; voltage control; and regulation service. GridAmerica may provide non-real time imbalance energy and ancillary services upon a showing of no harm to an RTO's ancillary service and imbalance energy markets.	Validates provision of ancillary services by GridAmerica to meet tariff requirements.	Periodically audits provision of ancillary services by third parties in GridAmerica footprint and recommends corrective action.	Proposes and implements approved provision of ancillary services allowed. Any financial obligations that are in addition to standard tariff terms will be borne by GridAmerica in accordance with any contract terms that are negotiated	Provide third party or POLR ancillary services on behalf of GridAmerica. Has ability to self-provide for bundled load. Will provide imbalance calculation (ancillary 4) for billing purposes until a regional market is adopted.
Planning and Expansion	Authority for region. Directs expansions as required. Develop joint planning protocol.	Develop joint planning protocol. Responsible for planning and expansion of its own system, but where RTO has ultimate authority when there are material impacts outside of GridAmerica.	Approves GridAmerica planning in GridAmerica footprint when plans have material affect in non-GridAmerica MIDWEST ISO footprint.	Assist Midwest ISO in developing a regional plan that improves the capability of the transmission system (and thereby facilitate efficient markets) by identifying engineering solutions (both to existing and new) in ensuring that secure and economically efficient plans are developed. Administer and actively process interconnection requests for the GridAmerica footprint. Analyzes and makes recommendations to coordinate planning in respect of ITCs under common management with GridAmerica in other RTOs.	Develop plans in GridAmerica footprint.	Provide GridAmerica with input/solutions to GridAmerica expansion plans and reliability plans, based on local knowledge.
Market Monitoring	Monitors market for entire region.	No market monitoring duties requested. Proposal to impose and collect penalties is rejected without prejudice.	Provides independent market monitoring in MIDWEST ISO footprint.			
Losses	Single method/system.	No responsibilities authorized at this time.	MIDWEST ISO provides losses for application in scheduling and settlement by GridAmerica in GridAmerica footprint.		Uses MIDWEST ISO provided losses for scheduling and settlement in GridAmerica footprint.	Provide GridAmerica with underlying data used as the basis for determining loss factors used for calculating losses.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Services Company, FirstEnergy Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER02-2233-001 and EC03-14-000
--	--

(Issued December 19, 2002)

MASSEY, Commissioner, concurring:

Our acceptance of a framework within which GridAmerica will develop and operate as an ITC is another important step toward expanding the scope of the Midwest ISO and thereby bringing the benefits of a well functioning electricity market to customers in the region. I am concerned, however, that there may be a drift in our policy regarding the appropriate role for an ITC functioning within an RTO.

I welcome the evolution of ITCs within the RTO framework, especially those that are not affiliated with merchant interests. Their profit motive and sharp focus on only transmission asset management promise an important role for ITCs in creating and maintaining the reliable and efficient transmission grid needed to support markets. My view of what that role should be is heavily influenced by one of the fundamental pillars of Standard Market Design: the operation of the grid and the operation of the market are a single integrated function within a region and are based on a single, security constrained economic dispatch of resources. Only one entity in the region can perform this function, and that is the RTO.

Today's order, however, continues the direction we began in the TRANSLink order and accepts an ITC framework that sub-divides the integrated operation function and parses out bits of it to the GridAmerica ITC. This presents two dangers. One of them is the creation of an operational seam within the market. There has been no showing that such an allocation is needed for efficiency or is consistent with reliability. The other danger is the conflict of interest created by allowing an owner of assets – whether transmission, generation or demand resources – to make decisions that will affect the economic interests of both it and competing asset owners. These were the very problems we were attempting to rectify in promoting RTO development in Order No. 2000.

I believe that the appropriate role for the ITC within an RTO is represented by the gridco model. The gridco ITC is a stand alone profit driven firm that owns and maintains transmission facilities and operates them strictly at the direction of the RTO. It maintains its grid facilities, perhaps driven by either PBR incentives or by the award of CRRs made possible by the capacity freed up by superior maintenance practices. The gridco ITC also makes grid expansions, again driven by the award of CRRs for the capacity created by the investments. I believe this approach to ITCs does not compromise SMD fundamentals and is consistent with our objectives in Order No. 2000. The Commission should be moving sharply toward this approach.

But today's order does not articulate that direction, and instead continues down the TRANSLink path. At the time we issued the TRANSLink order, I believe that its allocation of functions was generally acceptable. Nevertheless, I want the Commission to sharpen the distinction between the proper respective roles for RTOs and ITCs, and at a minimum require that all operational authority reside entirely with the RTO when SMD type markets are instituted. I am especially concerned that we accept for GridAmerica an interim delegation of scheduling authority beyond what was allowed in TRANSLink. Midwest ISO has contracted to GridAmerica the authority to schedule transactions that either source or sink in its footprint¹. This is beyond the authority that we allowed TRANSLink to schedule transactions that source and sink in its footprint. Given GridAmerica's disparate and non-contiguous footprint, any scheduling by it strikes me as inconsistent with the integrated operations of the RTO.

Today's order does require that the expanded authority that is contracted to GridAmerica end when Midwest ISO begins its Day Two congestion management regime or SMD, whichever is earlier. The order also provides for a reassessment of the functions delegated to GridAmerica once SMD is implemented or in response to changes in Commission policy. I would have preferred that the order require all operational

¹Specifically, Schedule 5A states that GridAmerica "prescreens all schedules in GridAmerica as Scheduling Entity." My understanding is that there is no explanation or definition of either of these terms in the filing.

authority delegated or contracted to GridAmerica end at Day Two or SMD. I believe that the Commission must begin to issue clear directions. Deference and vague future standards produce delay in delivering the benefits of grid regionalization to customers and cause resources to be wasted on arrangements that are ultimately not acceptable.

For these reasons, I respectfully concur with today's order.

William L. Massey
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Services Company, et al.
(GridAmerica)

Docket Nos. ER02-2233-001
EC03-14-000

(Issued December 19, 2002)

BROWNELL, Commissioner, concurring

Today, the Commission votes on a suite of orders that advance efficient, non-discriminatory and competitive energy services in the Midwest. These orders, and this GridAmerica order in particular, further establish that different business models can be accommodated under an umbrella organization. The collaborative effort on the part of market participants and the open spirit with which the Midwest ISO has approached expanding its footprint, leave me with great hope for the Midwest ISO. Importantly, in expanding its scope and embracing new opportunities for development, expansion, and ways of doing business, the Midwest ISO has not forgotten its charge to customers and reliability. The Midwest ISO and GridAmerica have agreed to reassess the functions delegated to GridAmerica and the associated costs. This will provide all of us, market participants and this Commission alike, with the benefit of some actual experience as we determine how the delegated functions should be refined or expanded.

Nora Mead Brownell
Commissioner